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Supreme Court of the United States

OCTOBER TERM, 1947

No. 301

EDWARD G. BUDD MANUFACTURING COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

FOREMAN'S ASSOCIATION OF AMERICA,
CHAPTER No. 77,
Intervenor.

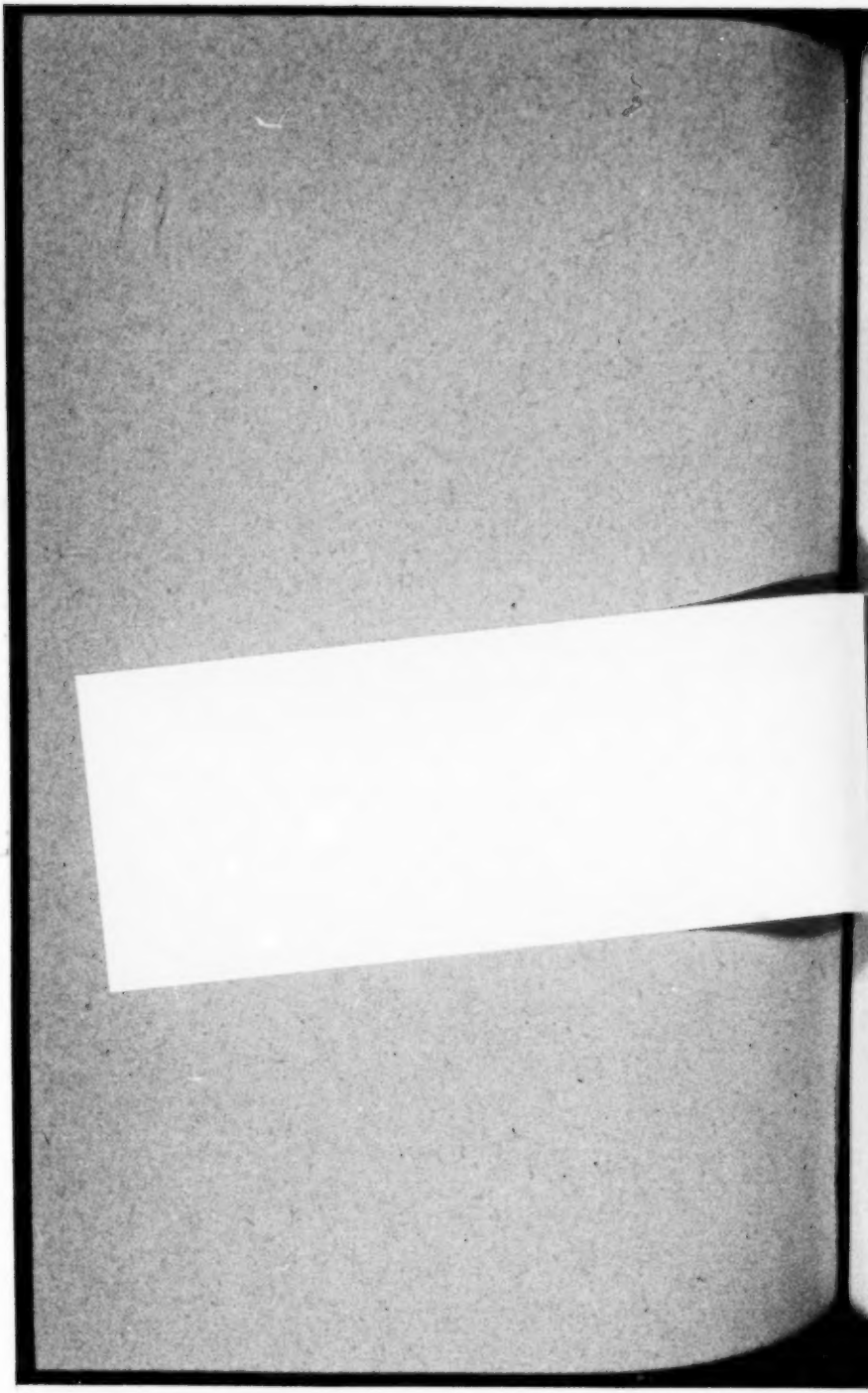
TRANSCRIPT OF RECORD

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

BEAUMONT, SMITH & HARRIS,
Ford Building,
Detroit, Mich.,
Counsel for Petitioner.

WALTER M. NELSON,
1438 Dime Building,
Detroit, Mich.,
Counsel for Intervenor.

A. NORMAN SOMERS,
Ass't General Counsel,
National Labor Relations Board,
Washington, D. C.,
Counsel for Respondent.



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In the

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT.

No. 10259.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

EDWARD G. BUDD MANUFACTURING COMPANY,
Respondent.

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

(Filed May 11, 1946.)

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U. S. C. § 151 *et seq.*), respectfully petitions this Court for the enforcement of its order against respondent, Edward G. Budd Manufacturing Company, Detroit, Michigan, and its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Edward G. Budd Manufacturing Company and Foreman's Association of America, Chapter 77, Case No. 7-C-1305."

In support of this petition, the Board respectfully shows:

(1) Respondent is a Pennsylvania corporation, engaged in business in the State of Michigan, within this judicial

circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on January 30, 1946, duly stated its findings of fact, conclusions of law, and issued an order directed to the respondent, and its officers, agents, successors, and assigns. So much of the aforesaid order as relates to this proceeding provides as follows:

ORDER.

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Edward G. Budd Manufacturing Company, Detroit, Michigan, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in the Foreman's Association of America, by discharging, laying off or refusing to transfer to production jobs any of its supervisory employes, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing its supervisory employees in the exercise of the right to self-organization, to form, join, assist or bargain collectively through Foreman's Association of America, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

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(a) Offer to Oscar Owens immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges;

(b) Make whole Oscar Owens for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages during the period from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during such period;

(c) Post immediately at its plant at Detroit, Michigan, copies of the notice attached hereto, marked "Appendix A." Copies of said notice to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by the respondent, be posted by it immediately, upon receipt thereof, and maintained for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by other material;

(d) Notify the Regional Director for the Seventh Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

(3) On January 30, 1946, the Board's Decision and Order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to respondent's counsel.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent, and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript, and upon so much of the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring respondent, and its officers, agents, successors, and assigns, to comply therewith. The Board further prays that this Honorable Court, in enforcing said order, shall provide that the aforementioned notice to be posted by respondent, marked "Appendix A," shall specifically recite that the Board's order has been enforced by a decree of this Court so that the introductory clause of the notice shall read as follows: "Appendix A, Notice to All Employees, Pursuant to a Decision and Order of the National Labor Relations Board, as enforced by a decree of the United States Circuit Court of Appeals, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:."

NATIONAL LABOR RELATIONS BOARD,
By /s/ A. NORMAN SOMERS,
Assistant General Counsel.

Dated at Washington, D. C.,
this 9th day of May 1946.

"APPENDIX A."

Notice to All Employees

Pursuant To

A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not in any manner interfere with, restrain, or coerce our supervisory employees in the exercise

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of their right to self-organization, to form, join, assist, or bargain collectively through Foreman's Association of America, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

We will offer to Oscar Owens immediate and full reinstatement to his former and substantially equivalent position without prejudice to any seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay suffered as a result of the discrimination.

All our supervisory employees are free to become or remain members of the above-named union. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any supervisory employee because of membership in or activity on behalf of said labor organization.

EDWARD G. BUDD MANUFACTURING COMPANY,
(Employer),

By.....
(Representative) (Title).

Dated.....

Note: Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

District of Columbia, ss:

A. Norman Somers, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board;

that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

/s/ A. NORMAN SOMERS,
Assistant General Counsel.

Subscribed and sworn to before me this 9th day of May 1946.

/s/ JOHN E. LAWYER,
(Seal) Notary Public, District of Columbia.

My Commission Expires August 14, 1949.

ANSWER OF THE EDWARD G. BUDD MANUFACTURING COMPANY TO THE PETITION OF THE NATIONAL LABOR RELATIONS BOARD FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD—AFFIDAVIT OF SERVICE.

(Filed May 16, 1946.)

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

The Edward G. Budd Manufacturing Company, respondent, a corporation duly organized and existing under the laws of the State of Pennsylvania, and duly authorized to do business in the State of Michigan, herein sometimes referred to as the Company, in accordance with an Act of Congress approved July 5, 1935 [49 Stat. 453, C. 372, 29 U. S. C. A., Sec. 160 (e)], known as the National Labor Relations Act, herein sometimes referred to as the Act,

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answers the petition of the National Labor Relations Board, hereinafter sometimes referred to as the Board, dated May 9, 1946, presented by the Board to this Honorable Court for the enforcement of a certain order issued by the Board against the Company, and says

(1) Respondent admits the allegations of paragraph one of the said petition, excepting that it denies that it committed an unfair labor practice within the meaning of the aforesaid National Labor Relations Act, all as will hereinafter more fully be set forth.

(2) Respondent admits the allegations of paragraph two of the said petition, but alleges that for the reasons hereinafter stated the Board lacked jurisdiction to issue the alleged findings of fact, alleged conclusions of law and the alleged decision and order referred to in said paragraph two of the said petition. Without waiving the fact that the Board lacked such jurisdiction, respondent further urges that the Board's alleged findings of fact, alleged conclusions of law and alleged decision and order are without support in law, all as will hereinafter more definitely appear.

(3) Respondent admits the allegations of paragraph three of the said petition.

(4) Respondent admits the allegations of paragraph four of the said petition.

In further answer to the said petition, the Company respectfully alleges that the Board erred as a matter of law as follows, no one reason being intended as a waiver of any other reason:

(a) In refusing to hold that the said Act has no application to the case.

(b) In refusing to hold that it lacked jurisdiction for the reason (1) that the Company's foremen involved in the case are not employees within the meaning of the said Act; (2) without waiving the foregoing, that the Company's foremen involved in the case are not the kind of employees to which Congress intended to grant the guar-

antees of the said Act; and (3) that it would be against the public interest, and would be against the national welfare, and would not effectuate the purposes of the said Act to include these foremen within the guarantees of the said Act.

(c) In refusing to hold that the foremen involved were "employers" within the meaning of Sec. 2 (2) of the said Act.

(d) In holding that the foremen involved were "employees" within the meaning of Sec. 2 (3) of the said Act.

(e) In refusing to hold that the foremen involved were not the kind of employees to which Congress intended to grant the guarantees of the said National Labor Relations Act.

(f) In refusing to hold that including these foremen within the Act would not effectuate the policies of the Act nor the national welfare.

(g) In refusing to hold that it is not in the public interest to include these foremen within the Act.

(h) In refusing to grant Respondent's motion to dismiss the charge and amended charge, made prior to the hearing before the Examiner and renewed at the opening of such hearing, renewed when the Board rested, and renewed upon the conclusion of all testimony offered at the hearing, the motion being based on the following reasons: "1. The Board does not have jurisdiction. 2. These foremen are not included within the N. L. R. A. 3. The foremen involved are not employees within the meaning of the N. L. R. A. 4. The foremen involved are employers within the meaning of the N. L. R. A. 5. Including these foremen within the N. L. R. A. would not effectuate the policies of the N. L. R. A. nor the national welfare. 6. It would not be in the public interest for the N. L. R. B. to include these foremen within the N. L. R. A."

(i) In refusing to hold that because of the fact that the Company at the times alleged in the said Board's charge was wholly in war production, during a war in which the

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United States was engaged, the including of these foremen within the guarantees of the Act would not effectuate the policies of the Act, nor the national welfare, and would not be in the public interest.

(j) In finding that these foremen "can only depart in minor matters or emergencies" from the production schedules, there being no substantial evidence in support of such finding.

(k) In failing to find that these foremen were a part of Respondent's management, the uncontradicted evidence being to that effect.

Wherefore, Respondent respectfully prays that this Honorable Court deny the petition for enforcement of the said Board, order the dismissal by decree of the same, and order and decree the invalidity of the Decision and Order of the said Board in this matter, dated January 30, 1946, or such parts or portions thereof, the premises considered, as to this Honorable Court shall seem meet and just.

EDWARD G. BUDD MANUFACTURING CO.,
By BEAUMONT, SMITH & HARRIS,
Its Attorneys,
11th Floor Ford Bldg.,
Detroit 26, Michigan.

ALBERT E. MEDER,
Of Counsel,
11th Floor Ford Bldg.,
Detroit 26, Michigan.

Dated at Detroit, Michigan
this 15th day of May, 1946.

State of Michigan }
County of Wayne } ss.

Albert E. Meder, being duly sworn, deposes and says that he is a member of the firm of Beaumont, Smith & Harris, attorneys for the Edward G. Budd Manufacturing

Company in the within matter, and that as such he did subscribe the foregoing Answer of the said Company to the Petition for Enforcement of the National Labor Relations Board and that he was duly authorized so to do; and deponent further says that he has read the foregoing Answer, has full knowledge of the contents thereof, and that the statements made therein are true to the best of his information, knowledge and belief.

ALBERT E. MEDER.

Subscribed and sworn to before me this 15th day of May, 1946.

HILDEGARDE BOLLMANN,
(Seal) Notary Public, Wayne County, Michigan.

My commission expires: Aug. 20, 1949.

AFFIDAVIT OF SERVICE.

State of Michigan }
County of Wayne } ss.

Albert E. Meder, being duly sworn, deposes and says that as attorney for Respondent in the within matter he did serve a true copy of the foregoing Answer upon the National Labor Relations Board on the 15th day of May, 1946, by placing the same in the United States mail at Detroit, Michigan, in a sealed envelope, postage prepaid, addressed "A. Norman Somers, Assistant General Counsel, National Labor Relations Board, Washington 25, D. C.," the said A. Norman Somers being the attorney of record in this Court and in this matter for the said Board.

ALBERT E. MEDER.

Subscribed and sworn to before me this 15th day of May, 1946.

HILDEGARDE BOLLMANN,
(Seal) Notary Public, Wayne County, Michigan.

My commission expires: Aug. 20, 1949.

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BOARD'S DESIGNATION.

(Filed May 11, 1946.)

Comes now the National Labor Relations Board, petitioner herein, by its Assistant General Counsel, and pursuant to Rule 15 (5) of this Court files this Designation of the portions of the transcript of record herein to be contained in the printed record:

1. Petition for enforcement, any response filed thereto, and this Designation of record.

2. Certificate of the National Labor Relations Board together with items 5, 6, 7, 8, 11, and 12 thereof.

3. The entire stenographic transcript of testimony in Case No. 7-C-1305.

4. The following Exhibits introduced in evidence in Case No. 7-C-1305:

Board Exhibits 1, 2, 3, 5, and 7;

Respondent's Exhibit 1.

Dated at Washington, D. C.,
this 9th day of May 1946.

A. NORMAN SOMERS,
Assistant General Counsel,
National Labor Relations Board.

RESPONDENT'S DESIGNATION OF RECORD— AFFIDAVIT OF SERVICE.

(Filed May 16, 1946.)

Comes now the Respondent, Edward G. Budd Manufacturing Company, by its counsel and designates the following portions of the record herein to be printed, in addition to the portions designated by the National Labor Relations Board:

1. Board's Exhibit 6;
2. Respondent's Exhibit 2.

BEAUMONT, SMITH & HARRIS,
Attorneys for Respondent,
11th Floor Ford Bldg.,
Detroit 26, Michigan.

ALBERT E. MEDER,
Of Counsel,
11th Floor Ford Bldg.,
Detroit 26, Michigan.

Dated at Detroit, Michigan
this 15th day of May, 1946.

AFFIDAVIT OF SERVICE.

State of Michigan }
County of Wayne } ss.

Albert E. Meder, being duly sworn, deposes and says that as attorney for the Respondent in the within matter he did serve a true copy of the foregoing Designation upon the National Labor Relations Board on the 15th day of May, 1946, by placing the same in the United States Mail at Detroit, Michigan, in a sealed envelope, postage prepaid, addressed "A. Norman Somers, Assistant General

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Counsel, National Labor Relations Board, Washington 25, D. C.," the said A. Norman Somers being the attorney of record in this Court and in this matter for the said Board.

ALBERT E. MEDER.

Subscribed and sworn to before me this 15th day of May, 1946.

HILDEGARDE BOLLMANN,
(Seal) Notary Public, Wayne County, Michigan.

My commission expires: Aug. 20, 1949.

STIPULATION.

(Filed June 7, 1946.)

It is hereby stipulated and agreed by and among Albert E. Meder, of Beaumont, Smith & Harris, counsel for Edward G. Budd Manufacturing Company, respondent, and A. Norman Somers, Assistant General Counsel, National Labor Relations Board, petitioner herein, that the printed record shall contain, in place of the entire exhibits denominated Board's Exhibits 6 and 7 and Respondent's Exhibit 2, heretofore designated by the parties, only the following portions of said Exhibits:

Board's Exhibit 6 is the "Constitution of the Foreman's Association of America and Laws Governing Chapters," as amended in 1943. Of that Exhibit print the following: Preamble, Articles I, II, III, V, XXI, XXII, XXIII and XXIV.

Stipulation

Board's Exhibit 7 is the "Constitution of the Foreman's Association of America and Laws Governing Chapters," as amended in 1944. Of that Exhibit print the following: Preamble, Articles I, II, III, IV, VI, XXIV and XXVIII.

Respondent's Exhibit 2 consists of 18 forms, used by foremen in respondent's plant. The forms are designated, respectively: Material Requisition; Employee's Department Transfer; Request for Leave of Absence; Personal Property Pass; Employee's Gate Pass; Dispensary Report of Disabled Employee; Dispensary Discharge of Disabled Employee; Foreman's Recommendation for Employee's Release; Requisition for Help; Payroll Deduction Voucher; Material Move Ticket; Daily Time Statement; Rate Change Notice; Department Request for Work to be Done; Employee's Timecard; Grievance Report; Overtime Authorization; Daily Production Report.

This description of Respondent's Exhibit 2 shall be printed in lieu of Respondent's Exhibit 2.

BEAUMONT, SMITH & HARRIS,
By ALBERT E. MEDER,
Counsel for Edward G. Budd Mfg. Co.

A. NORMAN SOMERS,
Assistant General Counsel,
National Labor Relations Board.

June 6, 1946.

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MOTION FOR LEAVE TO INTERVENE.

(Filed May 18, 1946.)

Foreman's Association of America, Chapter No. 77, a voluntary association, by Walter M. Nelson, its attorney, moves this Court for Leave to Intervene in the above entitled matter and cause, and to be ranged with plaintiff or petitioner therein, for reasons as follows:

1. Because Foreman's Association of America, Chapter No. 77, was complainant in the Unfair Labor Practice proceedings which have culminated in the petition pending in the above entitled cause;

2. Because Foreman's Association of America, Chapter No. 77, is a real party in interest;

3. Because the presence of said Foreman's Association of America, Chapter No. 77, as intervener and a party herein has facilitated the progress of the cause and will be an aid to the Court;

4. Because counsel for said petitioner has been consulted and has stated the willingness of petitioner that Foreman's Association of America, Chapter No. 77, be allowed to intervene herein, and said respondent can have no valid objection thereto;

This Motion is based upon the files and records of this Court in this cause and the Affidavit of Walter M. Nelson hereto attached.

WALTER M. NELSON,
Attorney for Foreman's Assoc. of America,
Chapter No. 77,
1438 Dime Building,
Detroit 26, Michigan,
RA 8351.

Dated: May 17, 1946.

AFFIDAVIT.

State of Michigan }
County of Wayne } ss.

Walter M. Nelson, being first duly sworn, deposes and says that he is attorney for Foreman's Association of America, Chapter No. 77, and that he has read the Motion for Leave to Intervene and be ranged as a party along with petitioner, to which this Affidavit is attached, and that the statements in said Motion contained are true, and deponent verily believes that the intervention proposed will be an aid in the progress of the case and an aid to the Court, and further deponent sayeth not.

WALTER M. NELSON.

Subscribed and sworn to before me this 16 day of May A. D. 1946.

JOHN B. AMBROSE,
Notary Public, Wayne County, Michigan.

My commission expires: Oct. 12, 1948.

PROOF OF SERVICE.

State of Michigan }
County of Wayne } ss.

Walter M. Nelson, being first duly sworn, deposes and says that on May 16, 1946 he served a true and carbon copy of the Motion and Affidavit to which this Proof of Service is attached upon counsel for the National Labor Relations Board, 7th Region, and upon counsel for Edward G. Budd Manufacturing Company, respondent herein, by enclosing true and carbon copies thereof in carefully sealed, sufficiently stamped envelopes addressed respectively to:

Mr. Harold A. Cranefield,
Attorney for N. L. R. B.,
1332 National Bank Building,
Detroit 26, Michigan.

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Messrs. Beaumont, Smith and Harris by
Albert E. Meder,
Attorneys for Edward G. Budd Manufacturing Company,
11th Floor, Ford Building,
Detroit 26, Michigan,

and by depositing the same in the United States receptacle in the Dime Building in Detroit, Michigan, and further deponent sayeth not.

WALTER M. NELSON.

Subscribed and sworn to before me this 16 day of May A. D. 1946.

JOHN B. AMBROSE,
Notary Public, Wayne County, Michigan.

My commission expires: Oct. 12, 1948.

ORDER GRANTING MOTION FOR LEAVE TO INTERVENE.

(Filed June 1, 1946.)

The motion of Foreman's Association of America for leave to intervene is allowed.

Approved for Entry

XEN HICKS,
Circuit Judge.

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD.

(Signed May 9, 1946.)

The National Labor Relations Board, by its Chief of the Order Section, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board—Series 3, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of a proceeding had before said Board entitled, "In the Matter of Edward G. Budd Manufacturing Company and Foreman's Association of America, Chapter 77," the same being known as Case No. 7-C-1305 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Copy of order designating Sidney Feiler Trial Examiner for the National Labor Relations Board, dated May 22, 1945.

(2) Stenographic transcript of testimony held before Trial Examiner Feiler on May 22 and 23, 1945, together with all exhibits introduced in evidence.

(3) Copy of telegram to all parties, dated May 24, 1945, extending time for filing briefs before Trial Examiner.

(4) Copy of Trial Examiner Feiler's Intermediate Report, dated June 23, 1945 (annexed to Item 12 hereof).

(5) Copy of order transferring case to the National Labor Relations Board, dated June 25, 1945.

(6) Copy of respondent's request for oral argument before the Board, dated July 2, 1945.

(7) Copy of respondent's exceptions to the Intermediate Report.

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Certificate of the National Labor Relations Board

(8) Copy of Board attorney's exceptions to the Intermediate Report.

(9) Copy of notice of hearing for the purpose of oral argument before the Board, dated December 20, 1945.

(10) Copy of notice of postponement of oral argument, dated January 9, 1946.

(11) Copy of list of appearances at oral argument held before the Board on January 22, 1946.

(12) Copy of decision, findings of fact, conclusions of law, and order issued by the National Labor Relations Board on January 30, 1946, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Chief of the Order Section of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 9th day of May 1946.

(Seal)

JOHN E. LAWYER,
Chief, Order Section,
National Labor Relations Board.

Second Amended Charge

United States of America.

BEFORE THE

NATIONAL LABOR RELATIONS BOARD,

SEVENTH REGION.

In the Matter of—	
EDWARD G. BUDD MANUFACTURING COMPANY	Case No. 7-C-1305.
and	
FOREMAN'S ASSOCIATION OF AMERICA, CHAPTER 77.	

SECOND AMENDED CHARGE.

(Board's Exhibit No. 1.)

(Date Filed, May 4, 1945.)
(Sworn to May 4, 1945.)

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Edward G. Budd Manufacturing Company at 12141 Charlevoix, Detroit, 14, Michigan, employing 6000 workers in the manufacture of war materials, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) of said Act, in that

The said company through its officers and agents has interfered with, restrained and coerced and is interfering with, restraining and coercing its employees in the exercise of their rights to self-organization to form, join and assist labor organizations to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purposes of collective bargaining, and in that

The said company did discharge on April 8, 1944, Fred P. Schieman, 20301 Elkhart. Detroit, 24, Michigan, and did discharge on April 14, 1944, Oscar Owens, 1327 West

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Boulevard, Berkley, Michigan, for the reasons that they had joined and assisted a labor organization known as Foreman's Association of America, Chapter 77, for the purposes of collective bargaining and other mutual aid and protection.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

FOREMAN'S ASSOCIATION OF AMERICA,
CHAPTER 77,
By: WILLIAM VALLANCE,
First Vice-President,
515 Barlum Tower,
Detroit, 26, Michigan,
Tel: CAdillac 2828.

Subscribed and sworn to before me this 4th day of May, 1945, at Detroit, Michigan.

DAVID CITRIN,
Attorney, N. L. R. B.

COMPLAINT.

(Board's Exhibit No. 2.)

(Issued May 4, 1945.)

It having been charged by Foreman's Association of America, Chapter 77, that Edward G. Budd Manufacturing Company, hereinafter called respondent, has engaged in and is engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, hereinafter called the Act, the National Labor Relations Board, hereinafter called the Board, by the Regional Director for the Seventh Region as agent for the Board, designated by Article IV, Section 1, of National Labor Relations Board Rules and Regulations, Series 3, as amended, effective December 26, 1943, hereby issues its Complaint against respondent herein and alleges the following:

1. Respondent is now and has been at all times hereinafter mentioned, a corporation duly organized under and existing by virtue of the laws of the State of Pennsylvania with its principal office in Philadelphia, Pennsylvania.

2. Respondent owns and operates and at all times hereinafter mentioned, has continuously owned and operated a plant in Detroit, Michigan, hereinafter called the Detroit plant, where it is now engaged in and has been at all times hereinafter mentioned, continuously engaged in the manufacture, sale, and distribution of fabricated steel products, including heavy duty truck bodies, aircraft bomb-bay doors, and miscellaneous stampings.

3. At all times material herein, respondent in the course and conduct of its business at the Detroit plant did cause and has continuously caused substantial quantities of raw materials used in the manufacture of its products to be purchased and transported in interstate commerce from states of the United States other than the State of Michigan to its Detroit plant, and did cause and has continuously caused substantial quantities of its products and equipment to be sold, transported, and distributed in in-

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terstate commerce from its Detroit plant into and through states of the United States other than the State of Michigan.

During the year 1944, respondent purchased materials, supplies, and equipment valued at approximately 5 million dollars of which approximately 60 per cent was shipped to respondent's Detroit plant from points located outside the State of Michigan.

During the year 1944, respondent's receipts from the sale of fabricated and partially fabricated products, materials, and equipment manufactured at its Detroit plant was in excess of 5 million dollars. Approximately 90 per cent of such products were sold by respondent to other manufacturing concerns in the State of Michigan, and such manufacturing concerns either further fabricated the said products and sold, transported, and distributed them to purchasers located outside the State of Michigan, or incorporated them into their own products which were sold, transported, and distributed in a similar manner.

4. Foreman's Association of America, Chapter 77, hereinafter called the Union, is a labor organization within the meaning of Section 2 (5) of the Act.

5. On or about April 8, 1944, respondent by its officers and agents while engaged in the operation of the Detroit plant as described above, did discharge Fred P. Schieman, and on or about April 14, 1944, did discharge Oscar Owens, and at all times since said dates has failed and refused and continues to fail and refuse to employ or to reemploy said employees or to reinstate them to their former or substantially equivalent positions of employment because said employees had joined and assisted the Union and engaged in other concerted activities for the purpose of collective bargaining and other mutual aid and protection.

6. By the acts set forth in paragraph 5 hereof, respondent did discriminate and is discriminating in regard to the hire and tenure of employment and terms or conditions of employment of its employees and did discourage and is discouraging membership in the Union and did thereby

engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

7. From on or about March 19, 1944, and at various times thereafter up to and including the date of issuance of this Complaint, while engaged in the operation of the Detroit plant as described above, respondent by its officers and agents and more particularly by Works Manager Walton, Personnel Director Erwood, Production Superintendent Montee, Night Superintendent Gilbert, Paint Superintendent Roberts, did interrogate its supervisory employees as to whether or not they were members of or were engaged in activities on behalf of the Union; did advise, urge, and warn its supervisory employees to refrain from assisting, becoming, or remaining members of the Union; did warn and threaten its supervisory employees that they would be discharged unless they resigned their membership in or ceased to engage in activities on behalf of the Union, did advise and warn its supervisory employees that rather than have the Union come into the Detroit plant, the said plant would be closed down; did vilify, disparage and express disapproval of the Union; and did state to and inform its supervisory employees that respondent was opposed to and would prevent the organization of its supervisory employees in the Union.

8. By all of the acts described in paragraphs 5 and 7 above, and by each of them, respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing its employees in the exercise of rights guaranteed them in Section 7 of the Act and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

9. The acts of respondent set forth in paragraphs 5 and 7 above, occurring in connection with the operations of respondent described in paragraphs 2 and 3 above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

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10. The aforesaid acts of respondent set forth in paragraphs 5 and 7 hereof, constitute unfair labor practices within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act,

Wherefore the National Labor Relations Board on this 4th day of May, 1945, issues its Complaint against Edward G. Budd Manufacturing Company, respondent herein.

FRANK H. BOWEN,
Director,
National Labor Relations Board,
Seventh Region.

(Seal)

NOTICE OF HEARING.

(Board's Exhibit No. 3.)

(Signed May 4, 1945.)

Please Take Notice that on the 22nd day of May, 1945, at 10:00 A. M., 1332 National Bank Building, Detroit, Michigan, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Second Amended Charge upon which the Complaint is based is attached hereto.

You are further notified that you have the right to file with the undersigned Regional Director, acting in this

matter as agent of the National Labor Relations Board, an answer to the said Complaint within ten (10) days from the service thereof.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

In Witness Whereof the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Regional Director for the Seventh Region on this 4th day of May, 1945.

(Seal)

FRANK H. BOWEN,
Regional Director,
National Labor Relations Board.

MOTION AND ANSWER OF EDWARD G. BUDD MANUFACTURING COMPANY TO COMPLAINT.

(Board's Exhibit No. 5.)

(Sworn to May 11, 1945.)

Now comes Edward G. Budd Manufacturing Company and moves that the Complaint be dismissed for the following reasons:

1. The Board does not have jurisdiction.

2. These foremen are not included within the N. L. R. A.

3. The foremen involved are not employees within the meaning of the N. L. R. A.

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4. The foremen involved are employers within the meaning of the N. L. R. A.

5. Including these foremen within the N. L. R. A. would not effectuate the policies of the N. L. R. A. nor the national welfare.

6. It is not in the public interest for the N. L. R. B. to include these foremen within the N. L. R. A.

Without waiving the motion and in answer to the Complaint the Company states:

1, 2, 3, 4. The Company admits the matters alleged in paragraphs 1, 2, 3 and 4 of the Complaint.

5. Answering paragraph 5 of the Complaint, the Company says that Fred Schieman was one of its salaried foremen. It denies that he was discharged by it and states that it demoted Fred Schieman because of a reduction in production schedules, Schieman having been the junior foreman in the department at the time of his demotion. Further, that Schieman had theretofore been employed by the Company among its rank and file employees; that the demotion of Schieman was to his former job among rank and file employees; and that Schieman chose to accept an outright release rather than the demotion. That the Company has never refused nor does it now refuse to reemploy Schieman in his former job as a rank and file employee. Further, that the Company is willing to reemploy Schieman as a foreman when an opening occurs which he is capable of fulfilling. Further answering those portions of the paragraph as they pertain to Fred Schieman, the Company denies the same and alleges that the facts are as stated herein. Further, that other foremen were demoted for a similar reason at or about the same time as Schieman. As to Oscar Owens, the Company admits that it laid him off and that it refuses to reemploy him, and alleges the reason to be that he attempted to organize members of the Company's supervision into a labor organization and that, when warned that continuation of such action would result in his being laid off, he agreed to discontinue such activities but failed to do so, whereupon he was laid off. Further answering those por-

tions of the paragraph as they pertain to Oscar Owens, the Company denies the same and alleges that the facts are as stated herein. Further, that such warning to Oscar Owens and any statements made by it to Oscar Owens were made in the exercise by it of the right of free speech guaranteed by the Constitution of the United States.

6. Answering paragraph 6, the Company denies all of the contents thereof.

7. Answering paragraph 7, the Company admits the contents thereof, excepting that it denies that it advised and warned "its supervisory employees that rather than have the Union come into the Detroit plant the said plant would be closed down" and denies that it vilified the Union. Further answering, the Company states that the statements made by it were in the exercise of the right of free speech guaranteed by the Constitution of the United States.

8, 9, 10. Answering paragraphs 8, 9 and 10, the Company denies all of the contents thereof.

The Company further states that the actions here involved occurred prior to the Board's decision in the Soss Manufacturing Company case.

Wherefore, the Company says that the Complaint should be dismissed.

EDWARD G. BUDD MANUFACTURING COMPANY,
12141 Charlevoix,
Detroit, Michigan,
By ROBERT H. ERWOOD,
Its Director of Personnel.

May 11, 1945.

BEAUMONT, SMITH & HARRIS,
Attorneys for the Company.

ALBERT E. MEDER,
Of Counsel,
11th Floor Ford Bldg.,
Detroit 26, Michigan.

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State of Michigan }
County of Wayne } ss.

Robert H. Erwood, being duly sworn, deposes and says that he is director of personnel of Edward G. Budd Manufacturing Company, that he has read the foregoing, and that he believes the same to be true.

ROBERT H. ERWOOD.

Subscribed and sworn to before me this 11th day of May, 1945.

HILDEGARDE BOLLMANN,
(Seal) Notary Public, Wayne County, Michigan.

My commission expires: Aug. 20, 1945.

ORDER TRANSFERRING CASE TO THE NATIONAL LABOR RELATIONS BOARD.

(Dated June 25, 1945.)

A hearing in the above-entitled case having been held before a duly designated Trial Examiner and the Intermediate Report of the said Trial Examiner, a copy of which is annexed hereto, having been filed with the Board in Washington, D. C.,

It Is Hereby Ordered, pursuant to Article II, Section 32, of National Labor Relations Board Rules and Regulations —Series 3, as amended, that Case No. 7-C-1305 be, and it hereby is, transferred to and continued before the Board.

Dated, Washington, D. C., June 25, 1945.

By direction of the Board:

CLARA M. MARTIN,
Acting Chief, Order Section.

RESPONDENT'S REQUEST FOR ORAL ARGUMENT.

(Dated July 2, 1945.)

Copy

July 2, 1945.

National Labor Relations Board,
Washington, D. C.

Gentlemen:

Re: Edward G. Budd Manufacturing Co.
Case No. 7-C-1305.

As Attorneys for the Company we request permission to argue orally before the Board on the Company's exceptions to the Intermediate Report and in respect to the brief which will shortly be filed with you.

Very truly yours,

/s/ ALBERT E. MEDER.

AEM:HB

Copy:gc

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UNITED STATES OF AMERICA.

Before the

NATIONAL LABOR RELATIONS BOARD,

Trial Examining Division,

Washington, D. C.

In the Matter of—	
EDWARD G. BUDD MANUFACTURING COMPANY	Case No. 7-C-1305.
and	
FOREMAN'S ASSOCIATION OF AMERICA, CHAPTER 77.	

Mr. David Citrin, for the Board.

Mr. Albert E. Meder, of Beaumont, Smith and Harris, Detroit, Mich., for the respondent.

Mr. Walter M. Nelson, by Mr. Bernard E. Konopka, Detroit, Mich., and Mr. William Vallance, Detroit, Mich., for the Union.

INTERMEDIATE REPORT.

STATEMENT OF THE CASE.

Upon a second amended charge duly filed by Foreman's Association of America, Chapter 77, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director of the Seventh Region (Detroit, Michigan) issued its complaint dated May 4, 1945, against Edward G. Budd Manufacturing Company, Detroit, Michigan, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies

of the complaint, together with notice of hearing thereon, were duly served upon the respondent and the Union.

With respect to unfair labor practices, the complaint alleges in substance that the respondent: (1) from on or about March 19, 1944, did interrogate its supervisory employees as to their membership in and activities on behalf of the Union, did advise, urge, and warn its supervisory employees to refrain from assisting, becoming, or remaining members of the Union, threatening them with discharge if they continued such activities, did vilify, disparage, and express disapproval of the Union and threatened to close its plant if the Union did succeed in organizing its Detroit plant; and (2) did discharge Fred P. Schieman and Oscar Owens, and failed and refused to reemploy said employees because of their union activities.

Respondent filed its answer, verified by Robert H. Erwood, its Director of Personnel, on May 11, 1945. The answer includes a motion to dismiss the complaint. The answer admits the allegations of the complaint in respect to the nature and extent of respondent's business and that the Union is a labor organization within the meaning of Section 2 (5) of the Act. As to Schieman, respondent denies that he was discriminatorily discharged. As to Owens, the answer "admits that it laid him off and that it refuses to reemploy him, and alleges the reason to be that he attempted to organize members of the Company's supervision into a labor organization and that, when warned that continuation of such action would result in his being laid off, he agreed to discontinue such activities but failed to do so, whereupon he was laid off." The answer further admits the allegations of interrogation of its supervisory employees concerning union activities and warnings to desist, but denies that it threatened to close the plant, or vilified the Union.

Pursuant to notice, a hearing was held at Detroit, Michigan, on May 22 and 23, 1945, before the undersigned, Sidney L. Feiler, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and respondent were represented by counsel, and the Union by counsel and a

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representative. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the hearing, respondent renewed its motion to dismiss the complaint. Decision was reserved on this motion. It is disposed of by the findings hereinafter made. Decision was also reserved on respondent's general motion to conform the pleadings to the proof in substantive matters. This latter motion is now denied.[1] At the close of the hearing, counsel for the Board moved to amend the complaint as to formal matters. This motion was granted without objection as to all pleadings. Oral argument was presented on behalf of the Board and the Union and a brief was filed on behalf of respondent.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT.

I. The Business of the Respondent.

The respondent is a Pennsylvania corporation having its principal office in Philadelphia, Pennsylvania. It operates, among others, a plant in Detroit, Michigan, herein called the plant, which plant is the only one concerned in this proceeding. At this plant, respondent is now engaged in, and has been at all times hereinafter mentioned continuously engaged in the manufacture, sale, and distribution of fabricated steel products, including heavy duty truck bodies, aircraft bomb-bay doors, and miscellaneous stampings. During the year 1944, respondent purchased materials, supplies, and equipment valued at approximately 5 million dollars of which approximately 10 percent was shipped to respondent's plant from points out-

[1] As indicated above, the answer was verified by Erwood, respondent's director of personnel. Counsel for respondent stated that the motion was made with special reference to the testimony of Erwood as elicited by counsel for the Board. Counsel for respondent further stated: "I wouldn't want to be more specific now, without having a chance to read the transcript. I would like to have the right to file a brief, in which brief I will cover that subject if, after receiving the transcript, I determine it is a matter I desire to amend." No discussion concerning the motion is contained in respondent's brief.

side the State of Michigan. During the same period, respondent's receipts from the sale of fabricated and partially fabricated products, materials, and equipment manufactured at its plant was in excess of 5 million dollars. Approximately 90 percent of such products were sold by respondent to other manufacturing concerns in the State of Michigan and these manufacturing concerns either further fabricated the said products and sold, transported, and distributed them to purchasers outside the State of Michigan, or incorporated them into their own products which were sold, transported, and distributed in a similar manner.

Respondent admits that it is engaged in commerce within the meaning of the Act.

II. The Organization Involved.

Foreman's Association of America, Chapter 77, unaffiliated, is a labor organization admitting to membership supervisory employees of the respondent.[2]

III. The Unfair Labor Practices.

A. *Interference, Restraint, and Coercion.*

Foremen at respondent's plant first became interested in self-organization in the early part of 1944. After some communication with Foreman's Association of America, a chapter was organized. The first meeting was held a few weeks before Easter and Foremen Oscar Owens, Ernest McNary, and Louis Harrison were elected temporary officers.

Robert Erwood, Director of Personnel, learned of the efforts of the foremen to organize.[3] He also learned the identities of the officers selected. Prompt counter-measures were immediately taken to stop the organization

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2 See Sosa Manufacturing Company, 56 N. L. R. B. 348; Packard Motor Car Company, 61 N. L. R. B., No. 3.

3 Except where indicated, there was no dispute among the witnesses as to the union activities carried on by foremen and respondent's reaction to those activities. Respondent in its answer has admitted most of its activities as alleged in the complaint. The findings in this section are based chiefly on the testimony of Erwood.

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drive. Erwood summoned Owens, McNary, and Harrison to his office. There, Erwood and Plant Manager Walton questioned them as to their membership in the Union, the offices they held therein, and their reasons for wanting a Union. This meeting occurred about March 29, 1944.

A few days later, the three foremen were called to another meeting with Walton and Erwood. Erwood told them, "You either got to resign as officers of the Union or resign from the Company." Walton added, "You fellows cannot belong to it [the Union] and work for Budd."[4] They were also requested to stop all organizational activity. The men asked for time to arrive at a decision and the meeting then ended. Subsequently they were pressed for a decision and they finally informed Walton and Erwood that they would resign from office. Later they did so and notified Erwood accordingly.

Subsequently, all foremen, separately or in small groups, were called before Walton, Erwood, and other supervisors and questioned as to why they wanted a union, and what grievances they had. They were also told that they did not need a union, that respondent did not want them to belong to a union, and that respondent was opposed of a union of foremen.[5]

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[4] These findings are based chiefly upon the testimony of Oscar Owens which is credited. Erwood's testimony was not as detailed as to the sequence of events or what was said, but he did testify that the men were asked to resign from office, and that he "inferred" that they would be discharged. His testimony is not at variance with that of Owens.

[5] Erwood testified that the foremen were not asked whether they belonged to the Union. He further testified, "We assumed, after all, that they did belong to the Union or we wouldn't have had them in the meeting." This is at variance with the admission in the answer that foremen were asked such questions. Erwood also denied that foremen, other than officers of the Union, were threatened with discharge. The answer admits the allegations of the complaint that respondent "did warn and threaten its supervisory employees that they would be discharged unless they resigned their membership in or ceased to engage in activities on behalf of the Union." The undersigned finds that respondent openly expressed its strong opposition to the Union and urged its foremen to withdraw from it and that the statements carried with it the definite threat of reprisal if the supervisory employees continued to organize and was so understood by the foremen. Vincent Depuye testified that Erwood declared at one of the meetings that the plant would be closed before the Union would be recognized. Erwood denied making this statement. Depuye's testimony is credited.

It is undenied and, in fact respondent expressly admits that it was and is strongly opposed to the unionization of its foremen and took direct action to prevent the organization of the Union by direct threats to its leaders and by statements to all other foremen that it was opposed to the Union and did not want them to be members in it. Its conduct constituted interference, restraint, and coercion and is not protected as an exercise of free speech.[6]

In its answer respondent urges that the complaint be dismissed for the following reasons:

1. The Board does not have jurisdiction.

2. These foremen are not included within the Act.

3. The foremen involved are not employees within the meaning of the Act.

4. The foremen are employers within the meaning of the Act.

5. Including these foremen within the Act would not effectuate the policies of the Act nor the national welfare.

6. It is not in the public interest to include these foremen within the Act.

The testimony established the fact that the foremen at the plant are supervisory employees who occupy an intermediate position between top management and the rank and file employees. They are in charge of production in their respective departments where they carry out production schedules which have been arranged and blueprinted for them and from which they can only depart in minor matters or in emergencies. All hiring is done through the Employment Office which passes on their requests for help. Foremen can recommend discharges, but those recommendations only become effective after they have been passed upon by the Personnel Department.

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[6] N. L. R. B. v. Virginia Electric and Power Co., 314 U. S. 469; N. L. R. B. v. American Tube Bending Co., 134 F. (2d) 993, cert. denied, 320 U. S. 768; Edward G. Budd Mfg. Co. v. N. L. R. B., 142 F. (2d) 922; Elastic Stop Nut Corporation v. N. L. R. B., 142 F. (2d) 371; N. L. R. B. v. M. E. Blatt Co., 143 F. (2d) 268.

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Foremen have the right and duty of attempting to settle grievances in the first instance, but they are bound by established rules and regulations and the contract between respondent and the Union representing its rank and file employees. Employees who wish to do so have the right to resort to the established grievance procedure and appeal decisions of foremen. In short, foremen are bound by directions from their own supervisors, but in their own departments, as supervisors, they exercise a good deal of discretion in carrying out their orders.

The Board has considered the status of employees in supervisory positions. In the **Soss** case[7] the Board ruled that supervisors are "employees" within the meaning of the Act and are entitled to protection under Section 8 (1) and (3) of the Act. Respondent argues that the **Soss** decision is wrong and also that it is not controlling in this case. Those contentions have been considered in the light of the recent **Packard** decision[8] where the Board reaffirmed its decision in the **Soss** case and held arguments similar to those now urged as no bar to a petition filed by Foreman's Association of America for certification of representatives of a group of supervisory employees. Respondent's contentions are rejected, and the undersigned finds that respondent's supervisory employees are employees within the meaning of the Act and entitled to the protection of Section 8 (1) and (3) thereof.

The undersigned concludes and finds that by the remarks of Personnel Director Erwood and Plant Manager Walton, and by the totality of their acts and conduct as found above, respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby commit unfair labor practices within the meaning of Section 8 (1) thereof.

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7 Soss Manufacturing Company, 56 N. L. R. B. 348.

8 Packard Motor Car Company, 61 N. L. R. B., No. 3.

B. *The Discriminatory Discharge.*[9]

Oscar Owens was the leader of the organizing movement among the foremen at the plant. He had been elected temporary president of the Union at its first meeting. Erwood learned of his activities and, as previously related, Erwood and Walton threatened Owens and the other officers with discharge unless they resigned their positions in the Union, withdrew from it, and ceased all organizational activity on its behalf. Owens resigned his position with the Union at a meeting held on April 2, 1944.

On April 14, 1944, Superintendent Montee told Owens that his employment was terminated. Owens complained about the short notice and said, "This doesn't come from you." Montee replied, "Well, I know. You know what it is all about."

Owens then spoke to Erwood and asked to be placed in a production job as a rank and file employee.[10] Owens was a competent employee and, at the time of his application for transfer, there was work to which he could be transferred.

However, Erwood had received word that Owens was still continuing activities on behalf of the Union and he refused to permit Owens' transfer because of the latter's union activities.

The Board alleges that Owens was discharged for his union activities. In its answer, respondent "admits that it laid him [Owens] off and that it refuses to reemploy him, and alleges the reason to be that he attempted to organize members of the Company's supervision into a labor organization and that, when warned that continuation of such action would result in his being laid off, he agreed to discontinue such activities but failed to do so whereupon he was laid off." Erwood, who assisted in the prepara-

[9] The findings in this section are based chiefly on the testimony of Owens and Erwood.

[10] It was respondent's policy to promote from the ranks and also to allow supervisors to return to non-supervisory jobs when there was no work for them as supervisors. Respondent's contract with the rank and file union expressly provided for these transfers.

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tion of the answer and who verified it, testified that actually Owens was laid off with some other foremen pursuant to a reduction in force and not because of his union activities.

After the lay-off of Owens, a group of foremen met with Erwood and Walton and protested his lay-off and asked for his reinstatement. This request was refused. Walton declared that Owens was "fired" because he was a liar.[11]

The undersigned concludes and finds that the union activities of Owens played a part in his selection for lay-off. In any event, there is no dispute that he was refused further employment, which would normally have been offered him, solely because of his union activities. This in itself was a violation of Section 8 (3) of the Act.

C. *The Alleged Discriminatory Discharge.*

Fred P. Schieman had been employed by respondent since 1935. He had been acting as a supervisor since 1940. In March 1943, he became a foreman in the Trim Shop Department. A year later, on April 8, 1944, General Superintendent Roberts told him that he would have to take a demotion to a production job. Schieman refused the demotion and asked for and received his release.

The Board contends that respondent was actuated by anti-union bias in its treatment of Schieman. Respondent alleges that Schieman was demoted pursuant to a reduction in force.

Erwood testified without contradiction that the pay roll in the Trim Shop Department decreased from $28,882.00 in January 1944, to $24,992.00 in April 1944. Also, it is undenied that the night shift in the Trim Shop Department was eliminated about the time of Schieman's demotion. The undersigned finds that there was a reduction in force in the department at the time of Schieman's demotion.

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11 This finding is based upon the testimony of Foremen Dupuye, McNary, and Bimberg, whose testimony is credited. Walton did not testify.

Even though there was a reduction in force with a consequent need for reduction in the supervisory staff the basis on which Schieman was selected for demotion must be considered. The supervisory staff was as follows: Superintendent Roberts was in general charge of the department. General Foreman Farr was in active charge of the operations. Schieman was foreman of the day assembly shift. Harold Moss, an assistant foreman, was in charge of the day shift in the sewing room. Norman Marshment, an assistant foreman, was in charge of all operations on the night shift.[12]

Of the three foremen, Schieman, Moss, and Marshment, Schieman was junior in the Trim Shop Department and the only one who did not have trimming experience. Marshment's experience in the department dated from 1938. He became an assistant foreman on March 15, 1943, approximately the same time when Schieman transferred to the department. Moss' experience also dated from 1938, when he was a foreman. He worked in another department from July 16, 1942 until March 26, 1943 when he returned to the department as an assistant foreman.

There was disagreement as to duties of John Spalding. The personnel records of respondent listed his classification as assistant foreman from November 1942 to January 1, 1945. Schieman testified that he displaced Spalding and that Roberts had told him that Spalding could not handle the job. Roberts testified that Spalding, whose experience in the department went back to 1938, actually was working as a trimmer at the time of Schieman's demotion.

Roberts told Schieman that he would have to demote him because of a reduction in force and that he wanted a

12 Both Erwood and Roberts testified that assistant foremen and foremen had equal authority and that the only difference between the categories was in the method of compensation, foremen being employed on a salaried basis and assistant foremen on an hourly basis. Schieman testified that Roberts, at the time of his transfer to the department, told him that he was next in line of authority after Farr and that he did give orders to Moss, but he also testified that it was not necessary to give Moss orders. The testimony of Erwood and Roberts is credited on this point.

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professional trimmer.[13] Schieman replied that he would take a release rather than a demotion. Roberts then took him to Joe Andrews, head of the Time Study Department, and tried unsuccessfully to place him there. Farr later handed him his release and said, "Fred . . . I wouldn't let that be a quit-slip. I would take it down to Bob [Erwood], because I think he will do something for you, . . . you are too valuable to let go." Schieman went to Erwood and the latter said, "Are you in a hurry for that? . . . Let me take it for a couple of days." Erwood later told Schieman that he could place him only in a production job. Schieman then took the release.

Schieman also complained to Walton that he was "getting a dirty deal." Walton replied, "I don't think so. Roberts talks well of you."

Schieman was a member of the Union. His union activity included leaving membership cards on the desks of Farr and Marshment and asked the latter if he wanted to join. Marshment replied that he was not interested.

The undersigned concludes and finds that Schieman was not demoted for union activities, but solely because of a reduction in force. It is true that he had no trimming experience, that none had been required of him when he was transferred, and that he had received no complaints as to his work. However, it is also true that the reduction in force required a consolidation of shifts and that Moss, who took over supervision of the entire day shift, had to supervise the sewing and assembly sections.[14] The undersigned is unable to conclude that Roberts' expressed reason for the demotion, i. e., that he needed a professional trimmer, was not the actual reason. Schieman's union activities were of a minor character and not of great significance in the entire picture of organizational activity at the plant. He undoubtedly was doing what others

[13] Schieman did not have that experience. This, and the following findings, are based on Schieman's testimony.

[14] The foremen retained all that had experience and had longer service in the department but respondent had no fixed seniority rule.

were doing. Respondent, while violently opposed to the Union, was following the course of ridding itself of any of the leaders of the Union who did not stop organizing. There is no proof of any such action against the members as such.[15] The statements and activities of Roberts, Farr, and Erwood in Schieman's behalf indicate a genuine desire to retain Schieman and not get rid of him. The undersigned finds that this charge of discrimination has not been sustained by the evidence.

IV. The Effect of the Unfair Labor Practices Upon Commerce.

The activities of respondent set forth in Section III above, occurring in connection with the operations of respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and such of them as have been found to be unfair labor practices tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy.

Since it has been found that respondent has engaged in unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

It has been found that the respondent discriminated in regard to the hire and tenure of employment of Oscar Owens. It will therefore be recommended that the respondent offer him immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority and other rights and privileges. It will be further recommended that respondent make him whole for any loss of pay he may have suffered by reason of respondent's discrimination by payment to him of a sum of money equal to the amount he would have earned

[15] There is no clear evidence to prove that Schieman's supervisors learned of his activities.

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as wages from the date of the discrimination against him to the date of the respondent's offer of reinstatement, less his net earnings during said period.[16]

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW.

1. Foreman's Association of America, Chapter 77, unaffiliated, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

3. By discriminating in regard to the hire and tenure of employment of Oscar Owens, thereby discouraging membership in Foreman's Association of America, Chapter 77, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

5. The respondent by demoting Fred P. Schieman has not engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

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[16] By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See Matter of Crossett Lumber Company, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See Republic Steel Corporation v. N. L. R. B., 311 U. S. 7.

RECOMMENDATIONS.

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent, Edward G. Budd Manufacturing Company, Detroit, Michigan, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Foreman's Association of America, Chapter 77, or any other labor organization of its employees by laying off, discharging, or refusing to reinstate any of its employees and from refusing to employ any member of that union or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of employment.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Foreman's Association of America, Chapter 77, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purposes of collective bargaining, or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act.

(a) Offer to Oscar Owens immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges;

(b) Make whole Oscar Owens for any loss in pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement less his net earnings[17] during such period;

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17 See footnote 16, supra.

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(c) Post immediately at its plant at Detroit, Michigan, copies of the notice attached to the Intermediate Report herein, marked "Appendix A." Copies of said notice to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by the respondent, be posted by it immediately, upon receipt thereof, and maintained for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by other material;

(d) Notify the Regional Director for the Seventh Region in writing within ten (10) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

It is further recommended that the complaint, insofar as it alleges that the respondent discriminated in regard to the hire and tenure of employment of Fred P. Schieman be dismissed.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective July 12, 1944, any party may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 33,

should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

SIDNEY L. FEILER,
Trial Examiner.

Dated: June 23, 1945.

"APPENDIX A."

Notice to All Employees.

Pursuant to
Recommendations of a Trial Examiner

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist

Foreman's Association of America, Chapter 77
or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

We will offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

Oscar Owens.

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of

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employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

EDWARD G. BUDD MANUFACTURING COMPANY,

(Employer)

By.....
(Representative) (Title)

Dated.....

Note: Any of the above-named employees presently serving in the Armed Forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the Armed Forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

COMPANY'S EXCEPTIONS TO INTERMEDIATE REPORT.

(Dated July 3, 1945.)

Now comes Edward G. Budd Manufacturing Company and excepts to the Intermediate Report as follows:

(Unless otherwise specified, the term "foreman" as used herein includes assistant foremen as well. It is admitted that in this plant foremen are salaried, while the term "assistant foreman" designates a few supervisors who are hourly rated due to the fact that they are more or

less temporary supervisors. The duties of foremen and assistant foremen in this plant are the same. See Note 12 of the Intermediate Report to this effect.)

(No assignment of error is to be considered as a waiver of any other assignment.)

1. For failure to dismiss or recommend dismissal of the second amended charge because of the Board's lack of jurisdiction, the Company having duly so moved prior to hearing before the Examiner, at the opening of the hearing, at the close of the Board's proofs and at the close of the hearing.

2. For failure to find or to recommend that the Company's foremen are not included within the N. L. R. A.

3. For failure to find or to recommend that the Company's foremen are not employees within the meaning of the N. L. R. A.

4. For failure to find or to recommend that the Company's foremen are not employees within the meaning of the N. L. R. A.

5. For failure to find or to recommend that the Company's foremen are employers within the meaning of the N. L. R. A.

6. For failure to find or to recommend that including the Company's foremen within the Act would not effectuate the policies of the N. L. R. A. and would not effectuate the national welfare.

7. For failure to find or to recommend that it is not in the public interest to include the Company's foremen within the N. L. R. A.

8. For stating (Report, p. 5, lines 1 to 15) that this case is controlled by the Board's holdings in **Soss Manufacturing Company**, 56 N. L. R. B. 348, and in **Packard Motor Car Company**, 61 N. L. R. B., No. 3.

9. For finding (R., p. 5, lines 11, 12, 13) that the Company's foremen are employees within the N. L. R. A. and entitled to the protection of Section 8 (1) and (3) thereof.

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Company's Exceptions to Intermediate Report

10. For finding (R., p. 5, lines 15 to 21) that the Company "interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby commit unfair labor practices within the meaning of Section 8 (1) thereof."

11. For finding that the alleged conduct of the Company was not protected by the exercise of free speech (R., p. 4, lines 1, 2, 3).

12. For finding that the Company engaged in unfair labor practices within the meaning of the N. L. R. A. (R., p. 8, lines 37 to 50).

13. For finding (R., p. 4, Note 5) that any representative of the Company stated "the plant would be closed before the Union would be recognized."

14. For finding that the union activities of Oscar Owens "played a part in his selection for lay-off" (R., p. 6, lines 11, 12).

15. Because of the Recommendations contained on page 9 of the Report.

16. Because in lines 11 and 12 and in line 20 on p. 9 of the Report reference is made to "any other labor organization of its employees" and to "any of its employees," this case involving only F. A. A. and foremen. See Exception No. 18.

17. Because in line 31 of the Report reference is made to "seniority." (Note 14 of the Report properly states that the Company has "no fixed seniority rule" as to foremen—that is, ability and skill control but when they are equal as between supervision length of service controls.)

18. Because the notices required to be posted (Report, p. 9, lines 39 to 42) refer to "any other labor organization" and to the Company's employees generally. See Exception No. 16.

19. The Report errs in that it does not include a finding to the effect that the testimony is that these foremen are a part of management.

Company's Exceptions to Intermediate Report

20. The Report errs in that it does not include a finding that the uncontroverted testimony is that these foremen exercise discretion in carrying out almost each and every one of their duties. The Report does not go far enough in merely stating (p. 4, lines 39, 40) that these foremen "exercise a good deal of discretion in carrying out their orders."

21. The Report errs in that it does not contain a finding in accord with the admitted fact that this employer has never collectively bargained with any labor organization on behalf of its foremen.

22. The Report errs in that it does not contain a finding in accord with the admitted fact that these foremen have no unresolved grievances.

23. The Examiner erred in that in his Report he fails to reasonably interpret the N. L. R. A.

24. The Report errs in stating, contrary to the evidence, "that the foremen at the plant are supervisory employees who occupy an intermediate position between top management and rank and file employees" (R., p. 4, lines 24, 25). It should have contained a finding that foremen in this plant are a part of management.

Respectfully submitted,

EDWARD G. BUDD MANUFACTURING COMPANY,

By BEAUMONT, SMITH & HARRIS,
Its Attorneys.

ALBERT E. MEDER,
Of Counsel,
11th Floor Ford Bldg.,
Detroit 26, Michigan.

True Copy.

July 3, 1945.

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BOARD ATTORNEY'S EXCEPTIONS TO INTERMEDIATE REPORT OF TRIAL EXAMINER.

The undersigned, Attorney, National Labor Relations Board, hereby files and takes the following exceptions to the Intermediate Report of the Trial Examiner.

1. Exception is taken to the findings of the Trial Examiner that the employment of Fred Schieman was not terminated for union activities.

2. Exception is taken to the finding of the Trial Examiner that Fred Schieman was released because of a reduction of force.

3. Exception is taken to the finding of the Trial Examiner that Schieman was released because he was not a professional trimmer.

4. Exception is taken to the failure of the Trial Examiner to determine whether or not the employment of Fred Schieman was terminated because of a reduction of force or because he was not a professional trimmer.

5. Exception is taken to the failure of the Trial Examiner to credit Schieman's testimony that he had authority over Harold Moss.

6. Exception is taken to the findings of the Trial Examiner that Schieman's union activities were of a minor character and that he was undoubtedly doing what others were doing.

7. Exception is taken to the findings of the Trial Examiner that Roberts, Farr, and Erwood had a genuine desire to retain Schieman and not get rid of him.

8. Exception is taken to the recommendation of the Trial Examiner that the complaint, insofar as it alleges that respondent discriminated in regard to the hire and tenure of the employment of Fred P. Schieman, be dismissed. Such a recommendation is contrary to the evidence in this case.

Respectfully submitted,

DAVID CITRIN,
Attorney.

LIST OF APPEARANCES AT ORAL ARGUMENT.

NATIONAL LABOR RELATIONS BOARD.

Date January 22, 1946.
Time Began 10:50.
Time Ended 11:20.

Board Members Present
1. Mr. Herzog.
2.
3. Mr. Houston.

Case No. 7-C-1305.

Name Edward G. Budd Manufacturing Company.

Appearances:

A) Of Counsel to the Board:
Review Attorney: Miss Wallach.

B) For the Company:
Name: Beaumont, Smith & Harris,
Albert E. Meder, Esq.
Address: 11th Floor Ford Bldg., Detroit 26, Michigan.
Name:
Address:

C) For the Union: Foreman's Association of America, Chapter 77.
Name:
Address:

None

Name:
Address:

D) For the Intervenor:
Name:
Address:

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UNITED STATES OF AMERICA.

Before the

NATIONAL LABOR RELATIONS BOARD.

In the Matter of—	
EDWARD G. BUDD MANUFACTURING COMPANY	Case No. 7-C-1305.
and	
FOREMAN'S ASSOCIATION OF AMERICA, CHAPTER 77.	

DECISION AND ORDER.

On June 23, 1945, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set out in the copy of the Intermediate Report attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief. Counsel for the Board filed exceptions and a supporting brief to the Trial Examiner's finding that the respondent had not violated the Act with respect to the lay-off of employee Fred P. Schieman. On January 22, 1946, the Board heard oral argument at Washington, D. C. The respondent participated in the argument; the Union submitted a brief in lieu of argument.

The Board has reviewed the Trial Examiner's rulings made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions of the respondent and counsel for the Board, the contentions advanced at the oral argument before the Board and in the briefs submitted by the parties, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

The Remedy.

Having found that the respondent has engaged in conduct violative of the Act, we shall order it to cease and desist not only from such conduct, but also, for the reasons hereinafter set forth, from in any other manner interfering with, restraining, or coercing its supervisory employees in the exercise of the rights guaranteed in Section 7 of the Act. The respondent, acting through its personnel director and plant manager, questioned its foremen about their union affiliation, requested them under threat of discharge to resign from the Union and to desist from organizational activities, threatened to close the plant before it would recognize the Union, and refused to transfer an employee to a production job, contrary to its well established practice, for the reason that said employee, after having been warned that continuation of union solicitation would result in his being laid off, failed to fulfill his promise to discontinue soliciting for the Union. The respondent's coercive course of conduct to defeat self-organization and its objects among its foremen culminated in the discriminatory discharge of employee Owens, conduct which "goes to the very heart of the Act."[1] Upon the entire record, it is reasonable to infer, and we find, that the respondent has displayed an attitude of opposition to the purposes of the Act to protect the rights of the supervisory employees, generally. Because of the respondent's unlawful conduct, and the underlying purpose manifested thereby, we are convinced that the unfair labor practices found are persuasively related to the other unfair labor practices prescribed by the Act, and that danger of their commission in the future is to be anticipated from the respondent's conduct in the past.[2] The preventive purposes of the Act will be thwarted unless our order is coextensive with the threat. However, unlike the recom-

1 N. L. R. B. v. Entwistle Manufacturing Co., 20 F. (2d) 352, 356 (C. C. A. 4); see also N. L. R. B. v. Automotive Maintenance Machinery Co., 116 F. (2d) 350, 353 (C. C. A. 7), where the Court observed: "No more effective form of intimidation nor one more violative of the N. L. R. Act can be conceived than discharge of an employee because he joined the union. . . ."

2 See May Department Stores Company v. N. L. R. B., ... U. S. ..., decided December 10, 1945.

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mendation of the Trial Examiner, we shall limit our cease and desist Order to supervisory employees and to the Foreman's Association of America.

ORDER.

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Edward G. Budd Manufacturing Company, Detroit, Michigan, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in the Foreman's Association of America, by discharging, laying off or refusing to transfer to production jobs any of its supervisory employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing its supervisory employees in the exercise of the right to self-organization, to form, join, assist or bargain collectively through Foreman's Association of America, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Oscar Owens immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges;

(b) Make whole Oscar Owens for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages during the period from the date of his discharge to

the date of the respondent's offer of reinstatement, less his net earnings during such period;

(c) Post immediately at its plant at Detroit, Michigan, copies of the notice attached hereto, marked "Appendix A." Copies of said notice to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by the respondent, be posted by it immediately, upon receipt thereof, and maintained for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by other material;

(d) Notify the Regional Director for the Seventh Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

It Is Further Ordered that the complaint, insofar as it alleges that the respondent discriminated in regard to the hire and tenure of employment of Fred P. Schieman, be, and it hereby is, dismissed.

Signed at Washington, D. C., this 30 day of Jan., 1946.

PAUL M. HERZOG,
Chairman,

JOHN M. HOUSTON,
Member,

(Seal) National Labor Relations Board.

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"APPENDIX A."

Notice to All Employees.

Pursuant to
A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not in any manner interfere with, restrain, or coerce our supervisory employees in the exercise of their right to self-organization, to form, join, assist, or bargain collectively through Foreman's Association of America, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

We will offer to Oscar Owens immediate and full reinstatement to his former and substantially equivalent position without prejudice to any seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay suffered as a result of the discrimination.

All our supervisory employees are free to become or remain members of the above-named union. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any supervisory employee because of membership in or activity on behalf of said labor organization.

EDWARD G. BUDD MANUFACTURING COMPANY,

(Employer)

By.....
(Representative) (Title)

Dated.....

Note: Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

AFFIDAVIT AS TO SERVICE.

District of Columbia, ss:

I, Mary Moss, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 30th day of January, 1946, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision and Order [and Intermediate Report] to the following-named persons, addressed to them at the following addresses:

69940—Beaumont, Smith & Harris. Att: Albert E. Meder, Esquire. 11th Floor, Ford Building, Detroit 26, Michigan.

69941—Walter M. Nelson, Esquire. Att: Bernard E. Konopka, Esquire. 1438 Dime Building, Detroit, Michigan.

MARY MOSS.

Subscribed and sworn to before me this 30th day of January, 1946.

CHARLES A. BRADLEY,
Designated Agent for the
National Labor Relations Board.

Registered Mail.

(Receipt for registered article No. 69940 omitted.)

(Original return receipt signed by J. H. Seward, Agent for Beaumont, Smith & Harris.)

Registered Mail.

(Receipt for registered article No. 69941 omitted.)

(Original return receipt signed by L. Kuskegian, Agent for Walter M. Nelson.)

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TRANSCRIPT OF TESTIMONY.

(Docketed May 29, 1945.)

1* Before the

NATIONAL LABOR RELATIONS BOARD,

Seventh Region.

In the Matter of—

EDWARD G. BUDD MANUFACTURING COMPANY

and

FOREMAN'S ASSOCIATION OF AMERICA, CHAPTER 77.

Case No. 7-C-1305.

1332 National Bank Building,
Detroit, Michigan,
Tuesday, May 22, 1945.

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 a. m.

Before:

Sidney L. Feiler, Esq., Trial Examiner.

Appearances:

Beaumont, Smith & Harris, by Albert E. Meder, Esq., 11th Floor, Ford Building, Detroit, Michigan, appearing on behalf of Respondent.

David Citrin, Esq., 1332 National Bank Building, Detroit, Michigan, appearing on behalf of the National Labor Relations Board.

Walter M. Nelson, Esq., by Bernard E. Konopka, Esq., 1438 Dime Building, Detroit, Michigan, appearing on behalf of the Union, and Mr. William Vallance (1st Vice-President), 515 Barlum Tower, Detroit, Michigan.

* Inset numbers appearing at outer edge of text indicate page numbers of original stenographic transcript of testimony.

3 PROCEEDINGS.

Trial Examiner Feiler: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of Edward G. Budd Manufacturing Company and Foreman's Association of America, Chapter 77, Case No. 7-C-1305.

The Trial Examiner appearing for the National Labor Relations Board is Sidney L. Feiler.

I will ask counsel to state their appearances for the record in the following order: For the Board?

Mr. Citrin: David Citrin, 1332 National Bank Building, Detroit, Michigan.

Mr. Meder: Beaumont, Smith and Harris, by Albert E. Meder, for the Detroit Division of the Edward G. Budd Manufacturing Company.

Trial Examiner Feiler: For the Foreman's Association?

Mr. Konopka: Foreman's Association of America, Walter M. Nelson, by Bernard E. Konopka, 1438 Dime Building.

Mr. Vallance. William Vallance, First Vice-president, Foreman's Association of America, 515 Barlum Tower, Detroit 26.

Trial Examiner Feiler: The official reporter makes the only official transcript of these proceedings. Citations in briefs and arguments, based upon the record, directed to the Trial Examiner, or to the Board, must cite

4 the official transcript in all references to the record.

The Board will not certify any transcript other than the official transcript for use in any court litigation. It may become necessary to make corrections in the record during the hearing. If so, the party desiring the correction will submit the suggested correction to the other party or parties in writing. When this is received with written approval it will be submitted to the Trial Examiner. In the event the parties are unable to agree upon proposed corrections, the Trial Examiner will then consider motions to correct the record, or may, upon his own motion, order corrections made. If the parties have been unable to agree upon such corrections upon

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the close of the hearing, but have entered into a stipulation concerning such matters after the close of the hearing but before the transfer of the case to the Board, such stipulations or motions should be addressed to the Trial Examiner in care of the Chief Trial Examiner in Washington. After the transfer of the case to the Board, all such communications should be directed to the Board itself, inasmuch as by such transfer to the Board, the Trial Examiner's connection with the case ceases.

Concise statements of reasons for motions or objections will be permitted, but the Trial Examiner may go off the record for the purpose of hearing extended argument. Since this is a formal hearing, we shall maintain the dignity and decorum which usually accompanies judicial proceedings. Off-the-record discussion or argument will not be included in the official transcript unless an order to that effect be made by the Trial Examiner, either upon the request of any of the parties, or upon his own motion. All requests to go off the record are to be directed to the Trial Examiner and not to the official reporter.

I will now instruct the reporter to take down everything that is stated here unless the Trial Examiner specifically directs that we go off the record. I prefer that there not be any off-the-record discussion of issues. If you want to discuss stipulations or matters pertaining to the issues, I prefer that you ask for a recess rather than request off-the-record discussions. The Trial Examiner will allow an automatic exception to all adverse rulings, and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

Five copies of all pleadings submitted during the hearing are to be filed with the Trial Examiner. All exhibits —and please note this particularly—offered in evidence shall be in duplicate, except where this rule is specifically waived. The original shall be filed with the reporter and the duplicate with the Trial Examiner. Any exhibits that are received, are received with the understanding that the duplicates be filed, if not at that time, then before the close of the hearing.

At the close of the hearing, the parties may, if
6 they so request, argue orally before the Trial Examiner, or if at such time the Trial Examiner believes that oral argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved, he may request oral argument from the parties and will feel free to discuss with and ask questions of the counsel or representatives of the parties with respect to contentions as to the issues, the facts and legal principles involved. As a usual rule, I prefer to hear oral argument at the close of the hearing. I am making the announcement at this time so that as we approach the end of the hearing you may consider that possibility and guide yourselves accordingly. Oral argument at the close of the hearing will be included in the stenographic report of the hearing.

Any party shall be entitled, upon request made before the close of the hearing, to file a brief with the Trial Examiner, who, before the close of the hearing, will then indicate the time within which such briefs may be filed. Five copies of such briefs shall be directed to the Trial Examiner, in care of the Chief Trial Examiner in Washington.

All right, Mr. Citrin.

Mr. Meder: Before the case starts, if you please, I would like to renew the Company's motion, which motion has heretofore been filed, the motion to dismiss.

Mr. Citrin: Relative to the motion filed on behalf of
the Budd Manufacturing Company, I would like to
7 say on that that what we have involved here is not a question of whether or not Foremen, as such, have the right to organize, but whether or not Foremen are employees and as employees whether or not they have the right to self-organization, and whether or not Respondent can discharge their employees simply because they are seeking to organize.

Trial Examiner Feiler: Do you care to argue that question now or submit any memo on that?

Mr. Meder: I would like to submit a memo eventually. I want it understood that by remaining in the hearing

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we are not waiving our motion. You appreciate what the motion is as well as I do.

Trial Examiner Feiler: All right.

Mr. Meder: If you want me to argue, I will be glad to argue, but it is just a waste of time. The same argument was made in the Soss Manufacturing Company and some of the rest of the cases.

Trial Examiner Feiler: I will reserve decision, then, until I receive your memo, and it is understood that by proceeding you do not waive your right.

Mr. Meder: Thank you.

(Documents were marked for identification, Board's Exhibits 1 through 5.)

Mr. Citrin: I have had the formal documents in this proceeding marked as Board's Exhibits 1 through 5, for identification. These formal documents are as follows:

8 Board's Exhibit No. 1, for identification, is the Second Amended Charge filed in the Seventh Regional Office of the National Labor Relations Board on May 4, 1945, on behalf of the Foreman's Association of America, Chapter 77;

Board's Exhibit 2, for identification, is a Complaint issued by Frank H. Bowen, Regional Director for the Seventh Regional Office of the National Labor Relations Board, said Complaint being issued on May 4, 1945;

Board's Exhibit 3, for identification, is the Notice of Hearing issued by Frank H. Bowen, Regional Director for the Seventh Regional Office of the National Labor Relations Board on May 4, 1945, scheduling the hearing in this proceeding for May 22, 1945, at the present hearing place and at the present time;

Board's Exhibit 4, for identification, is the Affidavit as to Service upon each of the parties to this proceeding of a copy of the Second Amended Charge, Complaint and Notice of Hearing, together with the return post-office receipts attached thereto;

Board's Exhibit 5, for identification, is the Motion and Answer of the Edward G. Budd Manufacturing Company to the Complaint, and signed by Robert J. Erwood, Director of Personnel of said Company, which Motion and Answer was filed in the Office of the Seventh Regional

Office of the National Labor Relations Board on May 12, 1945.

I would like the record to indicate I am showing these documents to Mr. Meder, counsel for Respondent, for his inspection.

Mr. Meder: No objection.

Mr. Citrin: I offer the documents to Mr. Konopka.

Mr. Konopka: No objection.

Trial Examiner Feiler: There being no objection, the documents are admitted into evidence.

(The documents heretofore marked for identification Board's Exhibits 1 through 5 were received in evidence.)

Mr. Citrin: At this time, I am wondering, Mr. Meder, if we could stipulate that during the year 1944 Respondent purchased materials, supplies, and equipment valued at approximately five million dollars, of which approximately sixty per cent was shipped to the Respondent's Detroit Plant from points located outside the State of Michigan.

Mr. Meder: The stipulation will be in respect to the Detroit Division of the Company, and is that the amount brought in and sent out of the state is at least in excess of five million. I will tell you frankly the amount is very much larger, and that is plenty to give you jurisdiction, which we have admitted in our Answer.

Mr. Citrin: Can we further stipulate, Mr. Meder, that in accordance with the Board's Rules and Regulations, that any allegation in the Complaint not specifically denied in the Answer, unless the Respondent shall state in the Answer that the Respondent is without knowledge, shall be deemed to be admitted to be true and may so be found by the Board?

Mr. Meder: No, the Answer speaks for itself.

Mr. Citrin: At this time, I would like to determine whether or not the documents which I have subpoenaed are available in the court room.

Mr. Meder: Yes. I do not think the subpoena was proper, but they are here, anyway.

Mr. Citrin: At this time, I would like to have the personnel, employment, pay roll, or work records, or any other records showing the date of hiring, job classification, changes in employment data, including date or dates

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thereof, hours of work, and rates of pay of the following employees: William Abney.

Mr. Meder: We have with us, Mr. Examiner, the originals, and we have also made copies, thinking you would like to retain a copy. We are very desirous of not having you retain the original.

Trial Examiner Feiler: All right.

Mr. Meder: We would like to have counsel for the Board examine the original and the copy to determine if it is a true copy. If they are not true copies, they will be
11 made true copies. I have not seen them, but I understand they are true copies. But we are very anxious to retain our original cards.

Trial Examiner Feiler: We will see that that is done. I might also suggest as to the mess of records that you have here, that counsel for the Board might examine them and perhaps a stipulation can be entered into as to the pertinent facts that they contain that are necessary for this proceeding and all the records kept out.

Mr. Meder: That is okay with us.

Trial Examiner Feiler: Do you gentlemen want some time to examine the records for that purpose?

Mr. Citrin: I would like to be on the record while we are obtaining these documents.

Trial Examiner Feiler: Yes, you are on the record now.

Mr. Citrin: (Continuing) Alfred Adler; Daniel Anderson; Edward Bimberg.

Mr. Meder: May we go off the record a moment while we get the originals and the copies of these sorted?

Trial Examiner Feiler: Yes.

(Discussion off the record.)

Trial Examiner Feiler: On the record.

Let the record show that the Respondent has produced the original and a copy of the Personnel Records of the employees named in the subpoena with the exception of A. Erhard and Henry A. Torres.

12 Mr. Meder: Would you care to have an explanation from the Company as to why these two are not produced?

Mr. Erwood: On A. Erhard we couldn't find any record. Apparently it might be a misspelling, as far as I know.

It is not available. Henry Torres, we weren't able to find a record on him, either. Perhaps that might be a misspelling, although it is exactly the same as the one above it.

Trial Examiner Feiler: Suppose the Board re-checks the information on those two employees, and if it still needs those records you can furnish the additional information.

Mr. Meder: Right.

Mr. Citrin: Do you have a list of the Supervisory employees in the Trim Shop Department during the months of March, April and May of 1944?

Mr. Erwood: Yes.

Mr. Meder: Do you want a list or do you want the cards? Read the rest into the record.

Mr. Citrin: We may as well have the cards.

Mr. Meder: What is the request? We are obeying the subpoena, Mr. Examiner. What does the subpoena ask for?

Mr. Citrin: I asked for a list of all Supervisory employees in the Trim Shop Department during the months of March, April and May of 1944.

Mr. Meder: You have those?

Mr. Erwood: I have them.

13 Trial Examiner Feiler: How many are there?

Mr. Erwood: Five.

Trial Examiner Feiler: What are the names?

Mr. Erwood: Edward C. Farr, Norman Marshment, Harold Moss, John Spalding, William Alfred Cadieux.

Trial Examiner Feiler: That is five.

Mr. Citrin: There is also additional information requested: Date first hired by the Company, date or dates each of said Supervisory employees worked in such department, and their job classification, including changes in classification of each of said Supervisory employees.

Mr. Meder: Well, Mr. Farr was hired on February 19, 1940 as a Foreman on the day shift, Department 10 at that time.

On 4-8-40, he became the Foreman in Department 15.

On 1-16-42, he became a Foreman in Department 45.

On 9-1-43, he became Superintendent in Department 12; all four of those on the day shift.

Trial Examiner Feiler: Is he still employed?

Mr. Erwood: Yes.

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Mr. Meder: William Cadieux became an Assistant Foreman in Department 12 on 11-9-44.

Norman Marshment—

Trial Examiner Feiler: Just a moment. Does that finish Cadieux? When was he first hired?

Mr. Meder: 11-5-35.

Trial Examiner Feiler: He is still employed, is that right?

Mr. Meder: He was then hired as a back trimmer, 11-5-35.

Trial Examiner Feiler: Do you want his record back to 1935? Was this information about 1944 sufficient?

Mr. Citrin: No, I would like his record back to 1935.

Mr. Meder: It is a great long record here in which he works as a rank and file employee until 11-9-44.

Trial Examiner Feiler: Oh, in other words, he was a nonsupervisory employee until 11-9-44. Do you want those categories, Mr. Citrin?

Mr. Citrin: Well, was he always in the trim shop department?

Mr. Meder: He was hired on 11-5-35—it does not make any difference to me if this lasts a week if it doesn't to the Board—he was hired into the Assembly Body Complete on 10-21-37, Department 12.

Then on 12-20-37, Department 4, Assembly; 12-30-38—12-20, I beg your pardon, 12-20-38, Department 12, Trimmer.

On 9-11-39, same department, trimmer cushion.

On 8-29-40, Department 27, loader.

11-4-40, Department 12, cushion builder.

6-8-42, Department 10, spot welder.

7-7-42, Department 12, stock cutter.

7-6-44, Department 12, cloth cutter leader.

11-9-44, Department 12, Assistant foreman.

Trial Examiner Feiler: Let me see; I did not know until we started this that the records that the Board demands would be so extensive. Perhaps it might be better, if we are going to have a good deal more about personnel records, to have a personnel manager get on the stand and testify as to what is in the records.

Mr. Meder: Well, there is no question about these records.

Trial Examiner Feiler: If you take them from counsel for Respondent, that is all right with me.

Mr. Meder: Well, he will take them from me, I guess.

Mr. Citrin: Yes.

Trial Examiner Feiler: All right. Off the record.

(Discussion off the record.)

Trial Examiner Feiler: On the record.

Mr. Meder: Norman Marshment, 6-2-32, Department 27, Loader. Did I give you all those?

Mr. Konopka: No. Is that the date he was hired?

Mr. Meder: Yes, sir.

11-11-35, Department 4, Trimmer.

8-9-38, Department 12, Trimmer.

8-27-40, Department 27, Loader.

9-16-40—what happened to him, he was a Cushion Builder?

Mr. Erwood: Hired as a Cushion Builder.

Mr. Meder: 9-16-40, Cushion Builder.

16 Trial Examiner Feiler: What department?

Mr. Meder: Department 12. Then he was changed to Assembler, same department, then to a Trim Repairman, then to a Leader.

Trial Examiner Feiler: Have you dates on those?

Mr. Erwood: They are rather hard to get at here. He came on as Foreman on 3-15-43.

Trial Examiner Feiler: Foreman in 12, is that it?

Mr. Meder: Foreman in 12. And then on 1-1-45, he again became a Foreman in Department 12.

Mr. Konopka: I did not understand that. There were two dates he became a Foreman in 12.

Mr. Erwood: The first date was as an hourly Foreman, the last date was as salaried.

Mr. Meder: Harold A. Moss.

Trial Examiner Feiler: Excuse me. Moss is still employed?

Mr. Erwood: Yes.

Mr. Konopka: As a Foreman?

Mr. Erwood: That's right.

Mr. Meder: Harold A. Moss. You read them.

Mr. Erwood: Harold Moss, hired 5-11-32 in 4 Department, as a Trimmer. Then he was laid off 7-27-33, reducing

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force. Rehired 9-20-33 in 4 Department, as a Trimmer. Transferred on 6-16-37, salaried pay roll, 4 Department, as Assistant Foreman. Transferred 7-26-38, 12 De-
17 partment, as a salaried Foreman. Transferred 7-16-42 to 7 Department, as an hourly foreman. Transferred 3-26-43, 12 Department, foreman—as an hourly foreman, I should have said.

Transferred 1-1-45, 12 department, as a salaried foreman.

Trial Examiner Feiler: Still employed?

Mr. Erwood: Still employed.

Trial Examiner Feiler: One more.

Mr. Erwood: John Spalding, hired 1-25-37, 4 Department, as a trimmer cushion builder. Transferred 8-9-38, 12 Department, as a cushion trimmer. Transferred 11-13-42 as Assistant Foreman.

Trial Examiner Feiler: In 12 Department?

Mr. Erwood: 12 Department, yes. Transferred 1-1-45, 12 Department, as a trim layout engineer.

Trial Examiner Feiler: Still employed?

Mr. Erwood: Still employed. I guess that does it.

Mr. Konopka: Is that an hourly classification?

Mr. Erwood: Salaried.

Mr. Konopka: Trim layout engineer?

Mr. Erwood: That is right.

Trial Examiner Feiler: Now, what else was called for?

Mr. Citrin: A list of all supervisory employees who were discharged, laid off, transferred, demoted, or whose em-
ployment status was otherwise changed during the
18 month of April, 1944, by the Company, showing in each instance the name of such employee, his job classification or title, date first hired by the Company, date or dates of prior changes in employment status.

Mr. Erwood: You are now asking for the names of other supervisors who were demoted in April 1944, and their job classifications?

Mr. Citrin: That is right, date first hired.

Mr. Erwood: All right. Edward Bimberg—do I understand you want to go way back into his former employment, all the way back again on these people?

Mr. Citrin: Well, I am interested in the date first hired, changes, when they became supervisory employees, then

if they went back on production, the dates they did, and when subsequently they went back to supervision.

Trial Examiner Feiler: I have a suggestion to make. It is true that—

Mr. Meder: Let me interrupt. If I had known you were going to ask for it this way, we would have had it all tabulated. Excuse me, sir.

Trial Examiner Feiler: My suggestion would be something along this line. Since you have the records here and copies of them, instead of reading off the list, it might save time, unless you object, to just make copies available to the Board for whatever purpose they want, and save reading it into the record. Suit yourselves, though. I know the subpoena calls for just the list.

Mr. Meder: I do not care how you do it. The Board can do any way they wish. Do you want the cards?

Trial Examiner Feiler: I would suggest just turning over the cards, then if they want to use them later—

Mr. Meder: I will turn over the copies, but I will not turn over the originals. We will give you the copies and the originals, and we want you to compare them, but we must, gentlemen, take our originals back.

Mr. Citrin: It is agreeable to us, Mr. Examiner.

Trial Examiner Feiler: All right. For the sake of the record, let up just have a list of the employees employed. First is Edward Bimberg.

Mr. Erwood: Edward Bimberg, J. Breeland—

Mr. Konopka: How many are there, may I inquire?

Mr. Erwood: Five.

Mr. Konopka: Would it not be just as short to have the witness take the stand and give the essential information of date of hiring and date promoted to the position of Supervision, and then demoted?

Trial Examiner Feiler: No, we have a long list here. It has taken a long time to get the information about some employees that, as far as I know, might or might not be used. I say let the Board have it now, and then if it becomes pertinent, then have it read into the record or introduced any way he sees fit. But we have spent a lot of time here, and I am taking notes on something, I do not know, we may never use.

Mr. Citrin: Well, as long as we can get the list now?

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Mr. Meder: Give him the originals and the copies, as long as we get the originals back.

Trial Examiner Feiler: All right. What is the next one?

Mr. Erwood: J. Breeland.

Mr. Meder: Let me say this before we go any further. I am told some of these cards disclose hourly rates when the employees were in the rank-and-file. I am not interested in having those rates disclosed, and I take it they play no part in this case, is that correct?

Trial Examiner Feiler: I assume so.

Mr. Citrin: I assume as much.

Mr. Meder: So then might I ask the Board if they will keep the rates just to themselves, and the rest of the information is okay.

Mr. Citrin: Certainly.

Mr. Meder: Is that satisfactory?

Mr. Citrin: Certainly.

Mr. Meder: Thank you.

Trial Examiner Feiler: All right.

Mr. Meder: Go ahead.

21 Mr. Erwood: V. Dupuye, John Watson, and the last one is Ellis Streu.

Trial Examiner Feiler: Is there any information requested by the subpoena that has not been furnished?

Mr. Citrin: At the present time, I would say the requirements of the subpoena have been fulfilled.

Trial Examiner Feiler: All right. Let us take a ten-minute recess at this time. I would suggest to the Board that those five cards be checked and perhaps you can extract whatever information you need, and if possible, either hold the cards in confidence or maybe you might be able to stipulate as to what you need from them and return all the cards to the Company.

Mr. Meder: I have no objection to letting counsel see the cards as long as he does not take the rates off.

Mr. Konopka: We are not interested in rates at all.

Mr. Meder: I include not only counsel, but Mr. Vallance; he may see the rates.

Trial Examiner Feiler: Ten minutes.

(A recess was taken.)

Trial Examiner Feiler: On the record.

Mr. Citrin: At this time, I would like to call Mr. Robert Erwood to the stand, and would like also to call him under the Michigan Statute as an adverse witness.

22 ROBERT ERWOOD,

called as an adverse witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Citrin) What is your name?

A. Robert Erwood, E-r-w-o-o-d.

Q. Where do you live, Mr. Erwood?

A. 5808 Courville.

Q. Will you spell that, please?

A. C-o-u-r-v-i-l-l-e.

Q. Where are you employed?

A. Edward G. Budd Manufacturing Company, Detroit Division.

Q. In what capacity, Mr. Erwood?

A. Director of Personnel.

Q. How long have you been employed by the Edward G. Budd Manufacturing Company, Detroit Division?

A. Oh, better than twelve years.

Q. How long have you been employed as Director of Personnel?

A. Six years.

Q. Now are you also employed by the Budd Wheel?

A. I am.

Q. Are you also employed by the Budd Induction?

A. I am.

Trial Examiner Feiler: Excuse me, Budd Wheel Company?

23 Mr. Citrin: That is right.

Trial Examiner Feiler: And Budd what?

Mr. Citrin: Induction.

The Witness: Heating, Inc.

Q. (By Mr. Citrin) Budd Induction Heating, Inc. Are those three companies all located in the same building?

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A. No, they are located on the same or adjacent properties.

Q. You are Director of Personnel for all three Companies?

A. That is correct.

Q. Now, as Director of Personnel, do you have charge of hiring and discharging the employees?

A. I do.

Q. Do you have the power to discharge any employee?

A. Any except Executives, I would say.

Q. Do you have anything to do with formulating the labor policies of the Edward G. Budd Manufacturing Company?

A. I do in the Detroit Division.

Q. When did you first learn that the Foreman's Association was attempting to organize at the Budd Manufacturing Company?

A. The early part of '44.

Mr. Citrin: Mr. Examiner, at this time, with the permission of all the parties, I will refer to the Edward G. Budd Manufacturing Company itself as Respondent, and the Foreman's Association of America as the Union.

Trial Examiner Feiler: All right, you may do so.

24 Mr. Meder: You mean by that the Detroit Division of the Budd Manufacturing Company?

Mr. Citrin: That is right.

Trial Examiner Feiler: The Company itself is named in the Complaint as a party.

Q. (By Mr. Citrin) How did you hapen to learn about the Union's organization in the plant, Mr. Erwood?

A. Well, just like I learn about many things that occur at the plant, by being told confidentially about it.

Q. Well, did someone from the plant come and tell you that the Foremen were trying to organize in the plant?

A. That's right.

Q. And this was in the early part of 1944?

A. I believe that's about right, yes.

Q. Well, would you fix that time as prior to the termination of employment of Oscar Owens and Fred Schieman?

A. Oh, yes.

Q. Now, do you recall who it was that told you about it?

A. No, I do not.

Q. Well, do you recall what it was you were told?

A. Well, I can't tell you verbatim, except I was told an organization of Foremen was being started in the plant.

Q. When you learned that organization of Foremen was starting in the plant, what did you do about it?

A. I called the Officers of the Union into my office.

25 Q. You called the Officers?

A. That's right.

Q. Of the Union?

A. That's right.

Q. And who were the Officers?

A. Mr. Owen, Mr. Harrison, Mr. McNary.

Trial Examiner Feiler: Would you spell that?

The Witness: M-c-N-a-r-y.

Q. (By Mr. Citrin) Anyone else?

A. It seems as though a man by the name of Czischki, Otto Czischki was called in, also.

Trial Examiner Feiler: Spell the name.

The Witness: Gosh, I can't. C-z-i-s—

Trial Examiner Feiler: You spell it.

Mr. Citrin: S-i-s-k-i.

The Witness: That is not right. It starts C-z-i-s.

Mr. Citrin: C-z-i-s-c-h-k-i.

The Witness: That is right.

Q. (By Mr. Citrin) You called those Foremen into your office, is that correct?

A. That's right.

Q. Who else was present in the office at that time?

A. The Plant Manager.

Q. Who was that?

A. Mr. Walton.

26 Q. Anyone else?

A. Mr. Hanafin.

Q. Who is he?

A. My assistant.

Q. Anyone else?

A. Not to my knowledge.

Q. How did you happen to know that these men were the Officers?

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A. I was told that confidentially.

Q. Who told you that?

A. I am not able to disclose that.

Q. Was it an employee of the plant?

A. Yes, it was.

Q. Was it a Supervisory employee of the plant?

A. Yes.

Trial Examiner Feiler: By Supervisory, do you mean a Foreman?

The Witness: Supervisor, one of the Foremen.

Trial Examiner Feiler: One of the Foremen?

The Witness: Yes. It wasn't a Foreman, it was a Superintendent or Assistant Superintendent, one of the higher Supervisors, I have forgotton, one of them. I am not very clear about it any more myself.

Q. (By Mr. Citrin) Was it someone that you had especially assigned to the task of finding out who the Officers of the Union were?

27 A. Not at all. Our Company never uses labor spies or anything in that connection.

Q. Well, was this the same man who first told you that the Foremen were organizing in the plant?

A. I don't remember.

Q. Well, what did he say to you?

A. Well, I don't remember that now, except that he said there was an organization forming. I told you that a few moments ago.

Q. Well, how did you get onto this question of Officers?

A. Well, I was informed there were some Officers that were selected.

Q. And he gave you their names?

A. That's correct.

Q. Did he say there had been a meeting of the Foremen?

A. I don't remember whether he did or not.

Q. Did he tell you there had been a meeting with the Foremen at Oscar Owens' house?

A. Well, I heard that later, yes.

Q. Did he happen to tell you how he knew these men were the Officers of the Union?

A. No, he did not.

Mr. Meder: I object to any further questioning along this line for the reason there is no charge along this
28 line made in the Complaint. The charge in the Complaint is the violation of (8) (1) and (8) (3), with specific allegations as to what comprises the alleged violation.

Trial Examiner Feiler: Read the pending question, please.

(Question and answer read.)

Mr. Meder: You will note, sir, that in Paragraph 5 of the Complaint it is alleged that the Company discharged Schieman and Owens for certain reasons and in 6 it is claimed that those discharges were a violation of (8) (3). Then in 7 it is charged that a certain meeting was held, that the Company made certain statements to the Foremen, and in 8 it is charged that by so doing it violated (8) (1). The Board should be held, if you please, to the Complaint we have been asked to try.

Trial Examiner Feiler: Well, I will listen to the question. Read the question to the witness.

Mr. Meder: Automatic exceptions are allowed?

Trial Examiner Feiler: Yes, that is right. You have one. And, Mr. Witness, whenever you see some one of counsel here about to object to a question, do not answer.

(Question and answer re-read.)

Trial Examiner Feiler: It has been already answered, then.

Mr. Meder: Instead of making the objection to the testimony, let it be understood my objection is a motion
29 to strike this line of testimony.

Trial Examiner Feiler: Motion denied, to which you have your exception.

Q. (By Mr. Citrin) Did this man give you the names of any other members of the Union?

A. No.

Q. Now, do I understand you correctly, Mr. Erwood, that you are saying you are refusing to state who the man was who told you the names of the Officers of the Union?

A. Well, I certainly won't answer it except on the advice of counsel.

Q. Mr. Erwood—

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Trial Examiner Feiler: Just a minute. What is your position on that?

Mr. Meder: I do not think he should be called upon to put somebody on the spot and that is what would be done here.

Trial Examiner Feiler: All right. As I understand the testimony so far, some employee in the plant—and correct me if I am wrong—some employee in the plant told you that there was an Association of Foremen starting?

The Witness: That's right.

Trial Examiner Feiler: And then later on, some Supervisory employee of the rank of Superintendent, or perhaps Assistant Superintendent, furnished you with the names of the Officers, and on the basis of that information
30 you called this meeting in your office, is that right?

The Witness: That's right.

Trial Examiner Feiler: All right. That is the understanding so far.

Q. (By Mr. Citrin) Mr. Erwood, have you ever appeared in any other hearing held before the National Labor Relations Board?

Mr. Meder: I object to that. I do not see that that is relevant here.

Trial Examiner Feiler: What is the relevancy?

Mr. Citrin: I am trying to show a policy, a labor policy, of the Edward G. Budd Manufacturing Company. I think I can go into this man's background and history.

Trial Examiner Feiler: All right, I will allow it for a while, subject, at the end, to a motion to strike if its relevancy is not demonstrated. You may answer that.

The Witness: I have been before the Board before, yes, on the combined three Companies.

Q. (By Mr. Citrin) Pardon?

A. I have been before the Board before, representing the combined three Companies.

Q. And at that time—

Mr. Meder: (Interposing) Now, I further object for this reason: There is no charge along this line in the Complaint. As I understand it, the courts have said time and
31 time again, and the Board has said, we are here to try the charges in the Complaint. There is no charge

in the Complaint to which this testimony could be relevant. I object for that reason and ask that the answer be stricken. I object to this line of questioning, sir, for the same reason.

Trial Examiner Feiler: I will allow it. The basic requirement, of course, is that you get notice and opportunity to meet any charges made; if any time the line of questioning seems to you to be outside of the scope of what you are prepared to meet and you want some time to prepare a defense, I will be glad to entertain a request of that nature at any time.

Mr. Meder: It is not a question, sir, of what I am prepared to meet. It is a question of what we are charged with. We are charged with certain things. I object to going outside of those charges and trying something else. That is what is now being done.

Trial Examiner Feiler: Well, I will allow it, subject to reviewing the whole matter when this line of testimony gets in.

Q. (By Mr. Citrin) Going back now to the time you called the Officers of the Union into your office, Mr. Erwood—

Mr. Meder: (Interposing) Now that he is going back, I move that that testimony be stricken. He certainly has not shown any relevancy to the charges that appear in this Complaint.

Mr. Citrin: Mr. Meder, I will try this case my way,
32 and when I am all finished, if you have any motions to strike, I am sure you will be entitled to make them.

Trial Examiner Feiler: Well, let us not have cross-exchanges between counsel.

Mr. Meder: Mine was directed to you, sir.

Mr. Citrin: I oppose the motion to strike.

Trial Examiner Feiler: This sort of just dangles in the air, that Erwood testified in other proceedings; that is as far as we have gotton so far.

Mr. Citrin: For the time being I am letting the matter drop. Now, if I do not tie it up, he can make his motion to strike it.

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Trial Examiner Feiler: All right. Well, I will allow it. So far it is innocuous. Was there a question?

(Record read by the reporter as follows:)

"Q. Going back now to the time you called the Officers of the Union into your office, Mr. Erwood—"

Q. (By Mr. Citrin, Continuing) —did you say anything to them?

Mr. Meder: Now, I will have to object, Mr. Examiner, to this line of questioning. There is no charge in the Complaint here that he called these Officers into the office and made any statements to them. There is no charge of violation of the Act in that respect, and there certainly is no detail of his having done anything of that kind alleged in the Complaint.

33 Mr. Citrin: Mr. Examiner, in Paragraph 7 it is alleged that the Respondent, by the Personnel Director and others, did interrogate its Supervisory employees, and so on and so forth. Now I am asking him what he said to the Officers at the time that he called them into the meeting, and it certainly is alleged in the Complaint. That specific allegation does not have to be made.

Trial Examiner Feiler: All right, I will allow it. You may answer that question.

The Witness: Your question was, did I say anything to them?

Mr. Citrin: That is right.

Trial Examiner Feiler: What happened at the meeting, what did you say to the employees, and what did they say to you, what did everyone say?

A. Well, I simply called them into the office and asked them whether they were the Officers of a Foreman's Union. They admitted they were. We asked them why we needed a Union. They were unable to give us any sound reasons for needing a Union of Foremen other than, as one man said, "I am getting old," and another man said, "Everybody else is doing it; why shouldn't we?" At that time we asked them to withdraw from the Union.

Trial Examiner Feiler: Can you be a little more specific when you say "we"? Who said that, you or someone else?

The Witness: It was either Mr. Walton, the Plant Man-

ager, or myself. It is hard to say definitely what was said by who.

34 Trial Examiner Feiler: I assume you both were in this conversation?

The Witness: That's right.

Trial Examiner Feiler: Then what happened?

The Witness: We told them that inasmuch as they were organizing the Union or attempting to do so, that we would immediately discuss the matter with all of our Foremen, which we did the following day. We asked them to give us their answer by Saturday of that week as to whether or not they were withdrawing from membership in the Union and active participation in it.

Trial Examiner Feiler: Let me just talk about this one meeting—well, you can bring that out.

The Witness: It is all one meeting.

Mr. Meder: May the dates be fixed, Mr. Examiner, of these meetings, please?

Trial Examiner Feiler: Well, that first meeting?

The Witness: I can't fix them.

Trial Examiner Feiler: That would be early in 1944?

The Witness: Early in '44. In fact, it was probably the latter part of March, or the first of April, somewhere in that period. I couldn't tell you definitely.

Q. (By Mr. Citrin) Do you know, Mr. Erwood, whether or not this meeting at which you first called the four Officers of the Union into your office occurred after the Foremen's meeting at Oscar Owens' house?

35 A. No, I don't know whether it occurred before or after.

Q. Did you know that there was a meeting of the Foremen at Oscar Owens' house?

A. Yes, I was informed of that.

Q. Were you also informed at this meeting at Oscar Owens' house that Officers were elected?

A. I don't remember whether I was informed of that or not. I knew they had been elected.

Q. Well, if I told you that the meeting at Oscar Owens' house occurred on March 29, 1944, would you say that was approximately correct?

A. As one gentleman to another, I would assume you are telling me the truth.

Q. Well, does that fit in with your best recollection?

A. What was the date?

Q. March 29, 1944.

A. It certainly was somewhere in the vicinity of that.

Q. Now you stated that you asked the four Officers, who were Owens, Harrison, McNary, and Otto Czischki to withdraw from the Union?

A. I did.

Q. Did you say anything to them about what would happen if they did not withdraw from the Union?

A. Well, I think I inferred if they did they would be discharged or we wouldn't need them, perhaps.

36 Mr. Citrin: May I have that answer read, Mr. Examiner?

Trial Examiner Feiler: Yes.

(Answer read.)

Q. (By Mr. Citrin) You mean, Mr. Erwood, do you not, if they did not withdraw that you were going to discharge them, is that correct?

A. Well, I certainly think that is what my inference was.

Q. Is that what you had in mind?

A. Certainly.

Q. Now subsequently, all the Supervisory employees of the Respondent were called into your office, is that correct?

A. No, that is not correct. They were called into a office, but not into mine.

Q. They were called into "a" office?

A. That's right.

Q. And you were present at all the interviews that occurred between various Supervisory employees and yourself?

A. I was.

Q. Did you tell all those other Supervisory employees that if they did not resign from the Union they would be discharged?

A. No, because we didn't ask them whether they belonged to the Union.

Q. Well, what did you ask the others?

A. We simply asked them why they thought they needed a Union, what reason they had for it, what grievances did they have at the time.

37 Q. Well, did you tell them they did not need a Union?

A. Yes, we told them we did not need a Union.

Trial Examiner Feiler: Let us have it in this way: You called all these Supervisory employees, including Foremen, into an office for a meeting? Is that right?

The Witness: We called them in separately, or in small groups.

Trial Examiner Feiler: Separately or in groups. Were they all told substantially the same thing?

The Witness: Yes.

Trial Examiner Feiler: And what were they told?

The Witness: In the first place, we asked them why they wanted a Union, what was the reason for organizing a Foreman's Union. We asked them whether they had grievances that were not resolved, what there was wrong with the organization that made them think they needed protection from somebody.

Mr. Meder: What organization?

The Witness: The Company. We told them that we did not want a Union and that we would oppose it.

Trial Examiner Feiler: By "we" you mean yourself?

The Witness: I mean the Company.

Trial Examiner Feiler: Well, did you do the talking?

The Witness: Partly, the Manager did part of it.

Trial Examiner Feiler: And the Manager whom

38 you have named did part of it?

Q. (By Mr. Citrin) Did you tell them they didn't need a Union?

A. I did.

Q. Did you tell them the Union would not do them any good?

A. I probably did.

Q. And you also told them, did you not, that if they did not get out of the Union they would be discharged?

A. No, I don't remember saying that.

Q. You do not remember saying that to the four Officers that you first called in?

A. Yes, definitely the four Officers.

Q. But as to the other Supervisory employees that you interrogated, you did not tell them that if they did not get out of the Union they would be discharged?

A. I don't remember saying it, no.

Q. Do you remember telling them to get out of the Union or else?

A. Who are you talking about now?

Q. The other Supervisory employees, excluding the four Officers?

A. No, I don't remember saying "get out or else".

Q. Did you tell them not to belong to the Union—did you tell the other Supervisory employees not to belong to the Union?

39 A. Well, I think we told them we didn't want them to belong to a Union. I don't remember telling them that they couldn't belong to it. We didn't want them to.

Q. Is it not true, Mr. Erwood, that you were going to do all in your power to see to it that there was not any Union at the plant?

A. Yes.

Q. Is it not true, Mr. Erwood, that you were following a policy that was laid down to you by men of the Edward G. Budd Manufacturing Company who hold higher positions than you do?

A. I wouldn't know how to answer that. I am the man that formulates the employment policies.

Q. Well, did you inform anyone from top Management about the Foreman's Association?

A. Why, certainly.

Q. Did you tell them what you were doing?

A. The Plant Manager happened to be sitting in with me on most of these things, so I think the top Management was well represented at the time.

Q. I see. By the Plant Manager you mean Mr. Walton?

A. That's correct.

Q. Does he hold a higher position than you do?

A. He does.

Q. And Mr. Walton also made some of the same statements that you made, is that not true?

40 A. I wouldn't answer for Mr. Walton. I was doing most of the talking.

Mr. Meder: Let me say on the record, there will be no question here but what any statements Mr. Erwood may have made were statements made by the Company. Mr. Erwood is head of the Personnel Department, one of the top Supervisors of the Company here in Detroit.

Q. (By Mr. Citrin) Now at some of these interviews that occurred between the Supervisory employees and Management, Mr. Walton was present at some of them with you, is that correct?

A. Yes.

Q. And Production Superintendent Montee was with you at some of them, is that correct?

A. I believe he was, yes. I am sure he was.

Q. And was Night Superintendent Gilbert with you at some of those?

A. I don't recall Mr. Gilbert being present; he may have been.

Q. Was Paint Superintendent Roberts present at some of those?

A. Yes.

Q. Mr. Erwood, I show you Board's Exhibit 2, and ask you if you ever saw that before?

A. Yes, it is a true copy of one that was served on the Company.

Q. A true copy of the Complaint that was served in this case on the Company?

A. Yes.

41 Q. And I direct your attention to Paragraph 7 of the Complaint. Will you look at it, please? Did you go over the statements that are contained in that Complaint? Did you read the statements in there?

A. Yes.

Q. I will show you Board's Exhibit No. 5, and ask you what that is?

A. That is our answer.

Mr. Meder: And Motion.

A. Motion and Answer to the Complaint.

Q. (By Mr. Citrin) By "our Answer", what do you mean?

A. The Company's Answer to the Complaint.

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Q. Now I direct your attention to page 3 of the Respondent's Answer, and ask you if that is your signature?

A. It is.

Q. Now did you read over that Answer and Motion before you signed your name?

A. Very thoroughly.

Q. And the statements therein contained are true?

A. They are.

Q. Now is it not true, Mr. Erwood, that from on or about March 19, 1944, and at various times thereafter, yourself, Plant Works Manager Walton, Production Superintendent Montee, Night Superintendent Gilbert and Paint Superintendent Roberts did interrogate the Supervisory employees as to whether or not they were members of or were engaged in activities on behalf
42 of the Union?

A. The only interrogation that was done was done by Mr. Walton and myself at the first meeting when we talked with four Officers, and at the following meeting we talked to all of the Foremen. The interrogation was then by Mr. Walton and myself.

Q. Well, now, when you say the following meeting when you talked to all the Foremen, did you have one meeting when all the Foremen were called in?

A. I had a series of continuous meetings one day.

Q. A series of continuous meetings?

A. That is right.

Q. At those series of continuous meetings, you and Mr. Walton interrogated your Supervisory employees as to whether or not they were members of or were engaged in activities on behalf of the Union?

A. We did not interrogate them as to whether they were members of a Union. We interrogated them as to a need for a Union and stated to them our position in the matter.

Q. Mr. Erwood, did you not read over the Answer when you signed it?

A. Well, I presume I did. What is it you are mentioning?

Q. Well, you admit the allegations of Paragraph 7, do you not, answering Paragraph 7?

A. What is it, what is 7?

43 Trial Examiner Feiler: Is there a pending question? (Question read.)

Mr. Meder: The Answer speaks for itself, Mr. Examiner.

Mr. Citrin: Maybe it does and maybe it doesn't, Mr. Examiner. I just as soon have his answer.

Mr. Meder: I object to the line of questioning for the reason the Answer speaks for itself.

Trial Examiner Feiler: Well, I will allow an inquiry as to Mr. Erwood's knowledge as to the background facts, but I will agree that a question as to the interpretation of the Complaint and the Answer is something that is a matter of argument between counsel, and certainly not with this witness who, I take it, is the Personnel Manager rather than attorney.

Mr. Citrin: There is no question of interpretation here. Either they questioned the Supervisory employees or they did not. I want to know whether they did or did not. In his answer he says they did. Now evidently he says they did not.

Trial Examiner Feiler: Well, as I say, you can ask questions along that line, but not as to the scope and effect of the Answer itself. Certainly, questions such as, did you do this or did you say that, are perfectly in order if you care to ask them. Suppose you address another question to the witness.

Q. (By Mr. Citrin) Mr. Erwood, did you and Mr. Walton at this series of meetings that you held with your

44 Supervisory employees question your Supervisory employees as to whether or not they were members or were engaged in activities on behalf of the Union?

Mr. Meder: That has already been asked about four times and answered.

Trial Examiner Feiler: I think we have not had an answer to it yet.

A. Well, inasmuch as these were general meetings that went over a long period of time, there was a great deal of conversation, certainly, about the Union. After all, we called them in for the purpose of discussing the Union, and how you could hold extended conferences over a full day and into the night without some time or other mention-

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ing the Union, I wouldn't quite know. We discussed the Union from all angles, if that is what you want, and if that is interrogation regarding the Union, I guess we did.

Trial Examiner Feiler: In those conferences, were the employees asked, "Are you fellows members of the Foreman's Association?"

The Witness: I can't honestly say that we did. Neither can I honestly say we didn't. It is one of those sort of general meetings, a series of general meetings.

Mr. Meder: Well, I will say that is what he told me when the Answer was drafted.

The Witness: I am not denying that we discussed
45 Unionization of foremen with our supervisors, nor have I tried to deny it at all.

Q. (By Mr. Citrin) Before you took the stand here you took an oath, Mr. Erwood, is that correct?

A. That is correct.

Q. And you signed this affidavit, Board's Exhibit 5?

A. That's right.

Q. You also took an oath at that time?

A. I did.

Q. Do you know the meaning of taking an oath?

Mr. Meder: Now, Mr. Examiner, I submit, please, that this line of questioning is entirely out of line here, and has not any business here. I object to it.

Trial Examiner Feiler: That is right. As I look at the Answer, it seems a pretty fair one. If there is any issue at all, it is as to that one clause that is denied. As to the rest, why cannot we rest on the concession in the Answer?

Mr. Meder: And the further issue that was raised—

Mr. Citrin: (Interposing) The man is now trying to qualify—

Mr. Meder: Just a minute—

Trial Examiner Feiler: Just a minute, please.

Mr. Meder: The further issue raised by the Answer is whether or not in what they said they exercised the right of free speech.

46 Trial Examiner Feiler: And that is a legal argument which, I take it, might be presented by briefs or oral arguments later.

Mr. Meder: That is right.

Mr. Citrin: Mr. Examiner, I want to find out from the witness whether or not he questioned the Supervisory employees. Now he is evidently trying to qualify his answer. If that is so, I want to know about it.

Mr. Meder: I think that is quite uncalled for. In fact, I am surprised that Counsel for the Board indulges in this sort of tactics. I had always thought that kind of tactics was the kind Manufacturers indulged in.

Trial Examiner Feiler: I will allow the questioning, but I am just wondering if it will accomplish too much by it.

All right, you may proceed.

Q. (By Mr. Citrin) Did you or did you not, Mr. Erwood, in this series of interviews that you held with your Supervisory employees, question them as to whether or not they were members of the Union?

A. We did not question them as individuals. We questioned the whole Union organizational drive and the need for it. I don't recall questioning individuals, saying, "Do you belong to the Union; do you belong to the Union, or do you belong to the Union?" We did not do that. We assumed, after all, that they did belong to the Union or we wouldn't have had them in the meeting.

47 Q. You called the Supervisory employees in, in groups of two and three and four, is that correct?

A. That's right, six and eight, too.

Q. While these men were present in an office, as you describe it, do you recall questioning the group as to whether or not they were members of the Union?

A. Not individually, no.

Q. Do you remember asking a group if they were members of the Union?

A. No, I do not remember asking the group whether they were members of the Union. I think we told them we knew they were members of the Union. We were not questioning them as to whether they belonged to the Union because we knew a great many of them did.

Q. Now in this series of conferences or interviews that you had with the other Supervisory employees, did you advise, urge, and warn them to refrain from becoming or remaining members of the Union?

A. Yes.

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Q. And did you warn and threaten the Supervisory employees in this series of conferences or interviews that they would be discharged unless they resigned their membership in the Union?

A. I don't remember threatening anyone in connection with it in those conferences.

48 Q. Do you remember if Mr. Walton threatened or advised or warned the Supervisory employees that unless they got out of the Union they would be discharged?

A. No.

Q. How did you happen to sign Board's Exhibit 5, Mr. Erwood?

A. Well, I don't quite know what you mean by that, how did I happen to sign it?

Q. Who prepared that statement, who prepared Board's Exhibit 5?

A. Mr. Meder and myself and Mr. Hanafin.

Q. Now when you come to Paragraph 7 of the Answer which was filed by the Edward G. Budd Company, you say there that you admit the allegations in Paragraph 7 of the Board's Complaint, except that you did not warn the employees that rather than have the Union come in the Detroit Plant the plant would be closed down, and the further claims as to free speech, didn't you read the Board's Complaint before you signed your Answer?

Mr. Meder: That has already been asked. I object to it. He said he had read it.

Trial Examiner Feiler: Well, I will allow it. You read the Complaint?

The Witness: Yes.

Trial Examiner Feiler: You assisted in preparing the Answer?

The Witness: That's right.

49 Trial Examiner Feiler: It was drawn with your knowledge as to what had happened being considered, is that right?

The Witness: That's right.

Q. (By Mr. Citrin) Mr. Erwood, do you not recall reading in the Board's Complaint this statement: "• • • did advise, urge and warn its Supervisory employees, to re-

frain from assisting, becoming or remaining members of the Union"?

A. No.

Q. "• • • did warn and threaten its Supervisory employees that they would be discharged unless they resigned their membership in or ceased to engage in activities on behalf of the Union". Do you recall reading those statements?

A. Yes.

Q. And in the Answer, Board's Exhibit 5 that is signed by you, you admit those statements were made, do you not?

Mr. Meder: The Answer speaks for itself. It is an improper question, objected to for that reason, Mr. Examiner.

Trial Examiner Feiler: Well, I would allow it if I could understand, frankly, your purpose in trying to prove by testimony items in the Complaint that have been admitted by the Answer.

Mr. Citrin: Mr. Examiner, if they are admitted in the Answer, then there is no reason why they should not be admitted in an open court room.

Trial Examiner Feiler: I am just wondering as to your purpose, frankly. I will not stop you, but I am just wondering.

Mr. Citrin: I am trying to find out the truth of this matter.

Mr. Meder: Any admission in any Answer is taken as an admission, Mr. Examiner. That is the ABC of pleading.

Trial Examiner Feiler: It seems to me the best you can accomplish is to finally work back to the point of the concession itself. If you want to, all right, I will allow it.

Mr. Citrin: I am interested in finding out what Mr. Erwood and Mr. Walton or any members of Management told their Supervisory employees in their series of conferences or interviews that they had with them. Now while it is admitted in the Answer, here is this man getting on the stand and now saying he did not make these statements. I am interested in finding out the truth of this situation, whether he made them or he did not make them.

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Trial Examiner Feiler: Well, I think you are getting the most favorable construction by sticking to the Answer, but I will allow it.

Mr. Citrin: That may be. On the other hand, I am not looking for an easy way out. I am interested in trying this case and bringing out the facts.

Trial Examiner Feiler: Okay. Is there a pending question?

(Record read by the reporter as follows:)

51 "Q. And in the Answer, Board's Exhibit 5 that is signed by you, you admit those statements were made, do you not?"

Trial Examiner Feiler: Will you answer the question?

The Witness: I will admit this, in the discussions with Mr. Owen, with Mr. McNary, with Mr. Czischki, with Mr. Harrison, we told those men that if they did not resign from the Union they would cease to be employed by the Company. Now we did not use that tactics with our other Foremen, but we certainly questioned them as to the need for a Foreman's Union and told them we were violently opposed to it and would prevent it if we could. Now that is what the Answer to the Complaint is. We admitted that we told the four men in question that they had to get out of the Union.

Q. (By Mr. Citrin) Did you convey to the other Supervisory employees in this series of interviews that you had, that you were opposed to the Foreman's Association?

A. Yes, sir.

Q. Did you tell them that you would prevent their organization into a Union?

A. Yes, sir.

Q. Did you tell them that the Union was not any good?

A. I don't know whether I did or not. I don't know what you mean by that.

Q. Did you tell them that the Union would not

52 do them any good?

A. We told them they didn't need a Union, we could do as much or more for them than any Union could, if that is what you mean.

Q. Now as to these other Supervisory employees with whom you had a series of interviews, you called them

into the office and you said you assumed they were members of the Union?

A. We assumed that some of them were members of the Union, yes.

Q. As to those groups you say that you do not recall whether or not you asked them whether or not they were members of the Union?

A. No, we did not ask them whether they were members of the Union.

Q. And do you deny that you told those groups that unless they got out of the Union they would be discharged?

A. I don't recall making that statement.

Trial Examiner Feiler: Excuse me. Let us take just a few minutes recess now.

(A short recess was taken.)

Trial Examiner Feiler: On the record.

Q. (By Mr. Citrin) In this series of interviews that you had with the Supervisory employees outside of the four Officers, did you tell them that you were opposed to the Union?

A. Yes.

53 Q. Did you tell them that you would prevent the organization of the Union?

A. Yes, I have already testified to that.

Q. Do I understand you correctly, Mr. Erwood, that outside of the four Officers you did not tell any other Supervisory employee that he would be discharged unless he resigned or got out of the Union?

A. Not to my knowledge.

Q. And that during the times that you were in the office with Mr. Walton and Supervisory employees were present, that Mr. Walton did not make such a statement?

A. I don't recall him saying so.

Q. Now did you tell Oscar Owens that he would be discharged unless he resigned from the Union?

A. I believe I did.

Q. Did you or did you not?

A. To the best of my knowledge, we did. I don't know whether it was exactly those words or not, but I think they were.

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Q. Why did you make those statements just to those four officers and not to the other Supervisory employees?

A. Well, I wouldn't know unless it was because we thought they were the organizers.

Q. Is it not true, Mr. Erwood, that you thought that if you got rid of the Officers of the Union, that that was your best chance to break a Union?

54 A. Would you repeat that?

Trial Examiner Feiler: Read the question.

(Question read.)

A. I can't answer that Yes or No, because at that time we didn't know whether there was an active Union there or not, so it wasn't a case of trying to break a Union or not; it was a case of trying to prevent the organization of Foremen into a Union.

Q. Well, then, is it not true, Mr. Erwood, that you feel the best way to prevent the organization of a Union is to get rid of the Officers of the Union?

A. No, we felt that the way to prevent or to make unnecessary the organization of Supervisors into a Union was to get the people who were doing the organizing and ask them to cease and desist.

Q. Did you tell Oscar Owens that unless he got out of the Union he would be laid off?

A. Yes.

Q. Now when was the last date that Oscar Owens worked for the Edward G. Budd Manufacturing Company?

A. Mr. Owens was notified by his Supervisor that his services were no longer required on the 17th of April. There is one thing here, that might be the 14th instead of the 17th, I am not quite clear. I think it is the 17th.

Mr. Meder: They probably have the date. What

55 date does the Board claim?

Mr. Citrin: The 14th.

Trial Examiner Feiler: It may have been the 14th?

The Witness: Yes.

Trial Examiner Feiler: But your memory is the 17th now?

Mr. Meder: Did he not have a severance slip?

The Witness: He should have one or did have one.

Mr. Meder: Well, that would probably show.

Q. (By Mr. Citrin) Would this refresh your recollection?

A. I don't know if it would or not. Well, it would appear from that pay-stub that it was the 14th. To be absolutely sure of it, it would be necessary to look on the clock card.

Trial Examiner Feiler: You say either the 14th or the 17th, he was notified his services were no longer required?

The Witness: That is right.

Trial Examiner Feiler: And his employment actually terminated when?

The Witness: He was cleared from the pay roll on the 30th, 4-30.

Trial Examiner Feiler: April 30, 1944?

The Witness: That's right.

Q. (By Mr. Citrin) Is it not true, Mr. Erwood, that Mr. Owens' employment terminated on April 14, and that he was given his vacation pay for two weeks, which would take it up to April 30?

56 A. That is true.

Q. But that after April 14, he no longer worked for the Company?

A. That is true.

Q. Now on whose orders was Mr. Owens' employment terminated?

A. Mr. Owens' employment was terminated along with a group of other Foremen at a time when production had been curtailed, and it was a legitimate reducing-force lay-off, and he was so notified of his services being terminated by his Superintendent.

Q. Who made the decision to terminate the employment of Oscar Owens?

A. Mr. Montee.

Q. You had nothing to do with it?

A. I do not originate separations from the pay roll. I approve them after they are made.

Q. You have the right, do you not, Mr. Erwood, to discharge any employee of the Company?

A. Yes, I have the right to originate a discharge if I see fit.

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Q. And you say you did not originate the discharge of Oscar Owens?

A. Not in this case.

Q. Is it not true you told Oscar Owens unless he resigned from the Union he would be discharged?

A. That's right.

57 Q. Is it not true that the reason Oscar Owens was discharged was because he continued his activities on behalf of the Union?

Mr. Meder: Mr. Examiner, why can he not be asked to tell what happened? Let him tell what happened about Oscar Owens. It would save a lot of time, I will tell you that.

Trial Examiner Feiler: It is all right with me. Let us see, you had this meeting with Owens and these three other Officers sometime, I think you said, in March or April, is that right?

The Witness: That's right.

Trial Examiner Feiler: And I think also at that time you told that group that they would be discharged or laid off if they persisted in organizational efforts of the Foreman's Association, is that right?

The Witness: Yes.

Mr. Citrin: I would like to correct your statement. The word used was "discharge".

Trial Examiner Feiler: All right, discharged, not laid off, is that right?

The Witness: That's right.

Trial Examiner Feiler: All right, then what happened subsequently as regards this particular man?

The Witness: When Mr. Owens was told by Management—

Mr. Meder: By whom?

58 The Witness: By Mr. Walton and myself to discontinue his efforts on behalf of the Foreman's Union and to resign his position as Officer in the Union, we gave him several days to give us his answer on that.

Trial Examiner Feiler: I think you mentioned Saturday.

The Witness: That is right. He came in Saturday or we called him, I have forgotten which, I believe we called

him in, and he, along with the other Officers of the Union, told Mr. Walton and myself that they would resign their positions in the Union, and that they would discontinue their efforts on behalf of the Union. At that time Mr. Owens wanted to know whether we wanted it in writing or not. We said No, his word was good enough for us. And so on the following day they had a meeting some place and the Officers supposedly resigned from the Union. We were coming into a period—we had had reductions in schedules, and we had excess Supervision about that time, also, because we had laid people off, that is, in the period of the next week or ten days. And during that period I was informed that Mr. Owens, while he had promised that he would resign his position in the Union and that he would discontinue his activities on behalf of the Union, was still continuing to do the very thing he promised he would not do. He was the only one, as far as I knew, that had not kept this promise to us. We then had a legitimate reduction in force. Mr. Owens was one of the Foremen who was reduced, who was laid off, along with five or six other Foremen.

59 Trial Examiner Feiler: What effect did his Union activities have on his selection for being laid off?

The Witness: No effect whatever, except we did not offer him other employment. And he asked me to be permitted to have a job with production and I said No.

Trial Examiner Feiler: You mean a non-supervisory job?

The Witness: Yes.

Trial Examiner Feiler: In other words, is it a correct statement of your position now that he was laid off pursuant to the reduction in force schedule which had nothing to do with his Union activities?

The Witness: That's right.

Trial Examiner Feiler: But that his request for other work in the plant was denied, and the Company has refused to rehire him in any capacity because of his Union activities, is that correct?

The Witness: That's right.

Trial Examiner Feiler: Continue.

Q. (By Mr. Citrin) Do you recall making this state-

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ment, Mr. Erwood: "As to Oscar Owens, the Company admits that it laid him off and that it refused to reemploy him, and alleges the reason to be that he attempted to organize members of the Company's supervision into a labor organization and that, when warned that continuation of such action would result in his being laid off, he agreed to discontinue such activities but failed to do so, whereupon he was laid off." Did you make
60 that statement?

A. That's right.

Q. Do you see anything in that statement about any legitimate reduction of force?

A. What do you interpret the word "lay-off" to mean if it doesn't mean a reduction in force?

Mr. Citrin: Will you read my question back to the witness, please?

(Question read.)

A. The answer is, when we talk of lay-off in our plant we talk reduction of force. That is our phraseology for it.

Q. (By Mr. Citrin) Using your phraseology for the moment, why was Oscar Owens laid off?

A. Reduction of force.

Q. When you made this particular statement I just read to you, were you lying then or are you lying now?

A. I never lied in my life.

Mr. Meder: Wait a minute, I object to that, Mr. Examiner. I object to the question for a very evident reason.

Trial Examiner Feiler: I will sustain the objection.

Q. (By Mr. Citrin) You say Oscar Owens was laid off because of a reduction in force?

A. I do.

Q. What do you mean by lay-off?

A. Separation from the pay roll.

61 Q. What do you mean by a discharge?

A. Discharge is a man who is separated from the pay roll for misconduct.

Q. Otherwise, there is no distinction in your mind between a lay-off and a discharge?

A. A lay-off is a man who is separated from the pay roll

through no fault of his own. A discharge is a man who is separated from the pay roll for misconduct.

Q. Well, ordinarily, when you lay an employee off, does not that mean that you will recall that employee if you have work for him?

A. Not in regard to Foremen, no.

Q. When you lay off an employee, when you lay off a Supervisory employee, you mean he is separated from the pay roll then?

A. Yes.

Q. And that you have no intention of calling him back?

A. Well, I don't say that. I say we are not obligated to call him back if we don't wish to.

Trial Examiner Feiler: What is the Company's policy on that?

The Witness: Supervisors are not controlled by seniority system. Therefore, they are not recalled in accordance with a seniority system. The rank-and-file employees of the plant are.

62 Trial Examiner Feiler: What has been the Company's policy on it, though, what have they done in the past when they have laid off Foremen?

The Witness: Our policy in our plant for Supervisors has been to demote them if we thought they were the kind of Supervisors we wished to retain. In Mr. Owens' case we didn't feel that way.

Trial Examiner Feiler: In other words, is it the Company's policy that if there is no work for a man as a Supervisor, they offer him a job in a non-Supervisory capacity, at least for the time being?

The Witness: That is right.

Mr. Meder: Might I say just to clear that up, that the contract for the rank-and-file, as we will show in a moment, provides for just that sort of thing. We will show that when we get around to it.

Trial Examiner Feiler: Suppose the Foreman says he would rather not work, we will say, as a mechanic, but wants to come back as a Foreman when you have an opening. What is your policy on that?

The Witness: Our policy on that would simply be if he left our employment we would not feel ourselves obligated to call him back. Neither would that mean, how-

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ever, that we would not call him back if conditions warranted. Supervisors are hard to get. We spend a great deal of time training them.

Trial Examiner Feiler: What has the Company
63 done in actual practice on that?

The Witness: Our practice has been, of course, to promote from the ranks, and therefore it has also been to demote back to the ranks so that in practically all cases we had our flow of supervision either working as Supervisors or back in the ranks, and we moved them back and forth as business conditions warranted.

Trial Examiner Feiler: And again give us your reason why you did not care to offer Owens that demotion into the ranks?

The Witness: Because Mr. Owens did not keep his promise to us to cease organizing Foremen, and inasmuch as he didn't keep his promise, then we felt no need or responsibility to demote him to another job outside of the supervisory ranks.

Q. (By Mr. Citrin) Is it not true, Mr. Erwood, that it was the custom and practice of the Company to permit Supervisory employees to go back on production?

A. Yes.

Q. Is it not true that the only departure that was made from that custom and practice was in the case of Oscar Owens?

A. Well, the answer to that is no. Other Supervisors have refused demotions, and when they have refused demotions back to productive operations, they have been granted their release.

Q. Yes, but is it not true, Mr. Erwood, that Mr. Owens asked you for a job on production?

A. Oh, definitely.

64 Q. And is it not true that you refused him such a job?

A. Yes, sir, personally.

Q. And the reason you refused him that job was because of his Union activities?

A. That is true.

Q. And is it not true that he was the only Supervisory employee who asked to return to production and was not allowed to do so?

Mr. Meder: You mean at this time? Mr. Examiner, I am sorry, I should have addressed that to you.

Trial Examiner Feiler: That is all right. You mean at that time or at any time?

Q. (By Mr. Citrin) Well, let us take in the past two years?

A. You mean have other Supervisors asked to be demoted?

Trial Examiner Feiler: And been refused?

Q. (By Mr. Citrin) I will get at it this way: Is it not true, Mr. Erwood, that in the past few years it has been the custom and practice of the Company that when it was necessary to reduce its Supervisory force, that the Supervisory employees were given an opportunity, if they so desired, to go back to work on production?

A. Wherever it has been practical to do so, that has been true.

Q. Now, is it not true that you had jobs out there on April 14, 1944, that Oscar Owens could do?

65 A. Oh, yes, without question.

Q. And that the only reason you did not give him a job on production, the job that was available, was because of his Union activity?

A. That's right.

Q. Now you say that these four Officers promised you that they would resign their offices?

A. That's right.

Q. Is it not true that they all did resign their offices?

A. That I wouldn't know. I only have their word for it.

Q. Did you not mention a while ago to the Trial Examiner that they had a meeting and that they resigned their offices?

A. They told us they had a meeting and that they resigned their offices, yes.

Q. And when you say "they" told you, whom do you mean by "they"?

A. The Officers in question. We were informed they had resigned, at any rate. I have forgotten just how it worked out, but they told us they had resigned

Q. Is it not true that after this series of interviews

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that you had, that the Foreman's Association had a meeting at the Barlum Tower?

A. I wouldn't know about that.

Q. You do not know about any meeting that was held at the Barlum Tower on April 2, 1944?

66 A. No, sir, I was not invited.

Q. Well, why do you say that Oscar Owens lied to you?

A. Because I was informed he was still continuing to organize.

Q. Informed by whom?

A. By a Supervisor.

Q. What was his name?

Mr. Meder: I submit he should not be required to put some Supervisor on the spot out there, Mr. Examiner.

Trial Examiner Feiler: By a Supervisor, do you mean another Foreman or someone higher in rank?

The Witness: No, someone higher in rank than a plain Foreman.

Mr. Meder: What was the classification, may I ask, of the person?

The Witness: I don't wish to answer that, Mr. Meder, if I may be excused.

Mr. Meder: It was a higher classification than a Foreman, was it?

The Witness: That's right.

Mr. Meder: But a part of Supervision?

The Witness: That's right.

Trial Examiner Feiler: But you do not want to divulge his name?

The Witness: That's right.

67 Trial Examiner Feiler: All right, next question.

Mr. Citrin: Mr. Examiner, I would like to have the man's name. They are relying on the position that because Oscar Owens lied to them, that he had a right to discharge him.

Trial Examiner Feiler: No, that is not what this witness has testified.

Mr. Meder: That is not the testimony at all.

Mr. Citrin: All right, for that reason they did not put him to work on another job. Now it might become important to know whether or not Oscar Owens was lying.

Trial Examiner Feiler: No, I do not think that is involved here, because I understand from the witness that he refused to give Owens another non-Supervisory assignment because of his continued Union activity. Is that true, sir?

The Witness: That is right.

Trial Examiner Feiler: All right. Now that was done on information—again I am trying to quote the witness and I am subject to correction by any of counsel here and the witness—that was done on the basis of information that Mr. Erwood had obtained from a member of top Management that Owens was continuing to organize the workers. Now whether or not—

Mr. Meder: The Foremen.

Trial Examiner Feiler: The Foremen, I am sorry. Now whether or not that was true, I think has no real relevancy here. It is Mr. Erwood's state of mind that is important. So you have got a concession that that information was relayed to him by a man who was clearly a part of management. There is no argument on that, so I do not think the name will be particularly helpful.

68

Q. (By Mr. Citrin) You say that the only reason Oscar Owens was laid off was because of a reduction in force?

A. That was the real reason he was laid off at that time.

Q. Is it not true, Mr. Erwood, that you would have discharged Oscar Owens regardless of whether or not there was a reduction in force?

Mr. Meder: I object to that. That is a supposition, pure and simple, has nothing to do with this case.

Mr. Citrin: I think the man can answer it.

Mr. Meder: Incompetent, irrelevant and immaterial as far as the issues here are concerned.

Trial Examiner Feiler: Well, I will allow it, although I think the subsequent conduct of Mr. Erwood speaks for itself, you may answer that.

The Witness: I don't know how I could answer that unless I would consult a crystal globe or something about what I would have done if something else hadn't happened.

Q. (By Mr. Citrin) Well, Mr. Erwood, you have been

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Personnel Director out there for some six years, have you not?

A. Yes, sir.

Q. And you told Mr. Owens, unless he quit the
69 Union, you were going to fire him, did you not?

Mr. Meder: He did not say that at all. That is not his testimony and I object, Mr. Examiner, to the question for that reason.

Trial Examiner Feiler: I think the question could be rephrased, "unless he stopped organizing the Association". Is that all right?

Q. (By Mr. Citrin) If that was not the original statement made to the four Officers, what was it?

A. You are asking me?

Q. I am asking you.

A. The original statement was made to the four Officers, that if they did not resign their positions from the Union and cease organizing employees, they would be discharged, yes.

Q. And at the time you made that statement, did you mean it?

A. Well, I am not in the habit of saying things I don't mean.

Q. Well, now, in your opinion, did Mr. Owens resign his office and cease his activities on behalf of the Union?

A. I couldn't answer that, whether he resigned or not. I don't think he ceased his activities on behalf of the Union, but I have no way of knowing whether he resigned his office.

Q. Well, did you believe he had ceased his activities on behalf of the Union?

A. Well, no, of course not. As I told you, he hadn't.

Q. So that is it not true, that regardless of whether
70 or not there was a reduction in force, that you would have discharged Oscar Owens?

Mr. Meder: Same objection I made a few minutes ago to the other question.

Mr. Citrin: Mr. Examiner, this is not taking a man into a flight of fantasy. He made a threat. He said he did not believe the man had ceased his activities. I think he can answer the question.

Trial Examiner Feiler: Well, I will propound a ques-

tion that might solve it, open to objection by any of the parties. When you received information from the Supervisory official that Owens was still continuing his work, did you form any conclusion as to the desirability of keeping Owens on the job?

Mr. Meder: May I ask what you mean by "his work", you mean his Union activity?

Trial Examiner Feiler: His Union activity. Did you form any conclusion at that time as to the desirability of keeping him out of the employ of the Company?

The Witness: No, because when we first requested that the Officers resign from the Union, resign their position from the Union, they told us they would do so, but they could not do it overnight, because in the case of the Treasurer, he had to return money and books and other things. We said, "All right, so long as you discontinue them as soon as you can, that will be all right with us".

71 Trial Examiner Feiler: All right. Subsequently they told you they had resigned?

The Witness: Yes.

Trial Examiner Feiler: Then one of your associates in Management told you that in fact Owens had not?

The Witness: That's right, not that he hadn't resigned, that he had not ceased organizing.

Trial Examiner Feiler: And believing that, as you undoubtedly did, did you then at that time form a conclusion as to the desirability of keeping Owens in the employ of the Company?

The Witness: No, because I knew that very shortly we were going to be faced by a reduction.

Trial Examiner Feiler: You figured that would take care of the situation?

The Witness: That's right.

Q. (By Mr. Citrin) Mr. Erwood, do you recall a Foreman's demonstration that was held at the plant after the termination of employment of Oscar Owens?

A. Oh, yes.

Q. Is it not true that a group of Foremen came down and inquired of you and Mr. Walton as to whether Owens had been fired?

A. That's right.

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Q. Is it not true that at that meeting Mr. Walton
72 said Owens was fired because he was a damned liar?

A. He may have used words to that effect.

Q. Did he or did he not?

A. I don't know whether he used those words. He certainly said Mr. Owens didn't keep his promise.

Q. Well, did not Mr. Walton say that Owens was fired because he was a liar?

A. I don't remember him using that word.

Q. Do you know a Foreman by the name of Al Stanovich?

A. Very well.

Q. Do you remember at this meeting that Al Stanovich said, "I have known Owens for years and Owens isn't a liar," do you remember that?

A. I remember Stanovich being a spokesman for a group of Foremen. I remember him inquiring as to the reasons why Mr. Owens was not continued in employment, and I remember us giving the reasons why he was not. Whether the word "liar" was used, I don't know. It certainly was not used by me.

Q. Was it used by Mr. Walton?

A. I don't remember.

Q. Do you remember that after Mr. Walton said that Owens was fired because he was a liar and Stanovich said he had known Owens for years and that Owens was no liar, that you interrupted Mr. Stanovich and Mr. Stanovich said, "Wait until I am through," and you said
73 to Mr. Stanovich, "You are through right now"?

A. Yes, I remember telling Stanovich he was through. I don't remember the first part of your question.

Q. Well, how did you happen to interrupt Mr. Stanovich?

A. Mr. Citrin, it isn't possible for an individual to remember all the things that occur when you have large-scale meetings and a certain amount of heat involved in those meetings, and so far as interrupting Mr. Stanovich is concerned, inasmuch as it was in my office, I had a right to interrupt him. I don't remember exactly how it came about, but interrupt him I did, and I also told him that if he felt that way he was all through, too.

Q. Do you recall after the discharge of Oscar Owens that you received a telephone call from Mr. Schmidt?

Trial Examiner Feiler: Identify him, please.

Mr. Citrin: I will identify him.

A. No, I don't recall receiving one from him regarding Mr. Owens, but I received no less than a dozen a day from him, so I very likely did.

Mr. Meder: Mr. Examiner, may we have Mr. Schmidt's identity?

Trial Examiner Feiler: That is what I was asking.

The Witness: He is President of Local 306. That is the Bargaining Agency for the Productive Employees in the shop.

Q. (By Mr. Citrin) Do you recall talking to Mr.
74 Schmidt relative to the discharge of Oscar Owens?

A. No, I can't say I did.

Q. You do not recall any conversation with Mr. Schmidt about it?

A. No.

Q. You cannot recall telling Mr. Schmidt that "Your Union better keep out of this"?

A. I don't remember telling him that, but if it came to my mind I would have told him.

Q. You do not recall saying to Mr. Schmidt that he should send Owens down to your office?

A. No. I don't know what Mr. Schmidt had to do with Mr. Owens, why I should tell him to send him down to my office. You mean he was at the Local Office?

Q. I believe you stated before that it is the policy of the Company to promote Foremen from the ranks, is that correct?

A. That's right.

Q. Is it not true that it frequently happens that you no longer have need for Supervisory employees, so they go back to production?

A. Quite frequently.

Q. You have a contract to that effect with the CIO Production Union, do you not?

Mr. Meder: The contract speaks for itself.

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Trial Examiner Feiler: We do not have it here.

75 Mr. Meder: It is here, sir.

Trial Examiner Feiler: I know, but we can have that answer.

The Witness: The contract is between the Production Employees and the Management. It does not cover Supervisors except that the Company insisted on having a clause in the contract whereby they could go back in the shop and retain their seniority. But actually the Company is under no obligation under that clause to so demote or transfer a Supervisor back to the Productive Groups.

Q. (By Mr. Citrin) But that has been your custom and practice, has it not?

A. Oh, yes.

Q. Is it not true, Mr. Erwood, that at the present time you are negotiating a contract with the CIO?

Mr. Meder: For whom, please?

Mr. Citrin: For the Production and Maintenance Workers at the Budd Manufacturing Company.

Mr. Meder: I object to that. I do not see that it has any relevancy here.

Trial Examiner Feiler: What is its relevancy?

Mr. Citrin: I will tie it up in about three questions, Mr. Examiner.

Trial Examiner Feiler: All right. I will allow it.

A. Yes, it is true. It is completed, practically.

76 Q. (By Mr. Citrin) Now, is it not true, Mr. Erwood, that one of the provisions in that contract is to the effect that if a man is hired in as a production worker and becomes a Supervisory employee, that subsequently he has the right to go back to production?

A. Yes.

Q. Provided he has sufficient seniority?

A. Yes. Seniority has nothing to do with it.

Q. Seniority has nothing to do with it?

A. No, sir.

Q. Well, is it true that your present contract states that when a Supervisory employee goes back to production his seniority shall date only from the original date of hiring?

A. That's right.

Q. What is meant by that clause?

A. Well, that means that regardless of how the man was hired, whether he was hired as a Supervisor or hired as a production worker, when he ceases to be a Supervisor and becomes a production worker he can revert back to production with accumulated seniority.

Q. But that his seniority shall date only from the original date of hiring, is that not true?

A. That's right.

Q. And the purpose of that clause is so that Foremen should not be given preferential seniority?

77 A. Oh, but they do have it under the clause.

Q. Now you say that under the new contract that you are negotiating at the present time, seniority has nothing to do with whether or not a Supervisory employee goes back to work on production?

A. Well, not at all. We are not obligated under the contract to reduce a Foreman to a production man. The clause begins in this manner: "When Supervisors cease"— if you will give me the contract in my bag over there, I will read it to you.

Trial Examiner Feiler: I do not know whether we need it right now at the present time. I think perhaps you have misunderstood the aim of the question. Suppose you have a man who is employed one year as a production worker, then he becomes a Supervisor for two years, then he decides for one reason or another to return him to the ranks of production workers. With how many years of service is he credited?

The Witness: Three.

Trial Examiner Feiler: Three for that production job. I think that is what the questions were aiming at, and of course, in getting a production job he could not take a job ahead of a production worker who had four years?

The Witness: No.

Trial Examiner Feiler: That is what I think the aim of the question is. Next question?

The Witness: But I will say this, in the contract we
78 can put that Foreman any place we want in the shop, so it is no problem.

Trial Examiner Feiler: You have the right?

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The Witness: We have the right to put him any place.

Trial Examiner Feiler: To put him anywhere.

Mr. Meder: In accordance with seniority.

The Witness: In accordance with seniority. Incidentally, I might say this, that was one of the most bitterly fought clauses in the contract. The Union wanted to take it away from the Foremen so they had no protection of seniority at all, and the Company fought it out and retained it.

Mr. Meder: Been there for years, has it not?

The Witness: Yes.

Q. (By Mr. Citrin) Do you know how long Oscar Owens had been employed by the Edward G. Budd Manufacturing Company?

A. Not without consulting the records. Since December the 1st, 1936.

Q. How long had he been a Supervisory employee?

A. I believe approximately January, 1939.

Q. Now when he first became a Supervisory employee in January, 1939, what was his rate at that time?

Mr. Meder: Now I rather object to these rates getting into the record unless it is absolutely necessary, Mr. Examiner.

Mr. Citrin: It is just the rate of one individual.

Mr. Meder: Unless there is some relevancy to it, I
79 will have to object.

Trial Examiner Feiler: Is the purport of this line of questioning that he got increases over his basic rate over a period of years?

Mr. Citrin: That is correct.

Mr. Meder: Did he?

The Witness: Yes. I can show you salary increases, five or six salary increases.

Trial Examiner Feiler: He did get some salary increases during this period of time?

The Witness: And hourly, too.

Trial Examiner Feiler: As a matter of fact, as far as I can gather from the testimony, the quality of his work was not in question at any time?

The Witness: No, we are not questioning it.

Q. (By Mr. Citrin) Is it not true that Oscar Owens was considered a very good Foreman?

A. Well, as compared to what?

Trial Examiner Feiler: With others?

The Witness: I would say he was a competent Foreman. He wasn't the best, neither was he the worst.

Q. (By Mr. Citrin) On April 14, 1944, what job was Oscar Owens on?

A. April when?

Q. April the 14th, 1944?

80 A. He was on the boiler job. I might enlarge on that by saying the boilers that were used in some of these Merchant Marine vessels, that is boiler casing.

Q. Now you received a subpoena from the National Labor Relations Board?

A. Yes, sir.

Q. And amongst other things, the subpoena asked for a list of all Supervisory employees who were discharged, laid off, transferred, demoted, or whose employment status was otherwise changed during the month of April, 1944, is that true?

A. That's true.

Q. Now in response to that subpoena you gave me a list of five names, and I will repeat them: Edward Bimberg, J. Breeland, Vincent Dupuye, John Watson, and Ellis Streu. Those were all Supervisory employees in April, is that correct?

A. That's correct.

Q. And I will add to this list Oscar Owens and Fred Schieman?

A. That's right.

Q. Outside of those seven, were there any Supervisory employees who were discharged, laid off, transferred, demoted, or whose employment status was changed during the month of April, 1944?

A. Well, there was a Foreman, undoubtedly, whose employment status was changed by reason of the reduction and who perhaps was moved from one job to another.

81 Mr. Meder: As foreman?

The Witness: As foreman. Their status was not

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changed, but merely their scene of operations was changed, perhaps.

Q. (By Mr. Citrin) Outside of these seven employees, were there any other supervisory employees who were discharged in April 1944?

A. No, not to my knowledge.

Q. Well, who received this subpoena?

A. I did, and I checked it.

Q. You checked the records?

A. Yes. Unless I have made a mistake, and it was purely a mistake, the number of people I gave to you is the number of people who were demoted or drastically changed.

Q. Or their rank was changed?

A. Yes.

Q. Now Edward Bimberg, what happened to him in April 1944?

A. Well, I will see if he is in this group here.

Mr. Meder: May I ask, Mr. Examiner, whether the question counsel is now about to put, which, I take it, will be lengthy, has to do with Owens?

Trial Examiner Feiler: Well, I think I see the direction it is heading. It may be something you people can stipulate.

Mr. Meder: Well, if it has nothing to do with Owens, I do not see where it is relevant to the issue here.

82 Trial Examiner Feiler: I have an idea this is something you can stipulate on if you care to.

Mr. Citrin: Well, since there are only five outside of the two, it will only take a minute.

Trial Examiner Feiler: All right, I will allow it.

The Witness: All right, I have Mr. Bimberg's employment record in front of me.

Q. (By Mr. Citrin) What happened to Mr. Bimberg in April, 1944?

A. Reduced from a Foreman to a Spot Welder

Q. He was not laid off, though, was he?

A. No, sir.

Q. What about J. Breeland?

A. Reduced to an Arc Welder.

Q. From a Foreman?

A. That's right.

Q. What happened to Vincent Dupuye?

A. Reduced to an Inspector.

Q. From a Foreman?

A. That's right.

Q. Incidentally, are you aware of the fact that Mr. Owens had been an Inspector for the Budd Company for over three years?

A. Oh, yes, well aware of it.

Q. Well, what happened to John Watson?

83 A. He was reduced from a Foreman to an Arc Welder.

Q. He was not laid off, was he?

A. No.

Q. What happened to Ellis Streu?

A. Well, he was reduced from a Foreman to, I presume, a Grinder. The rate indicates it would be a Grinding rate. Reduced to productive operator, anyway.

Q. Is it not true, Mr. Erwood, that in April, 1944, the only Supervisory employee of the Budd Manufacturing Company who was laid off was Oscar Owens?

A. No, sir.

Q. Who else?

A. Mr. Schieman.

Q. Outside of Mr. Owens and Mr. Schieman?

A. Yes, sir, there was no more laid off.

Q. Who was that?

A. I said there was no more laid off.

Q. As far as Mr. Schieman is concerned, you gave Mr. Schieman the opportunity of going back on production, which he refused?

A. That's right.

Q. Is it not true, Mr. Erwood, that in the four months of 1944, that Mr. Owens was the only Supervisory employee who was laid off without being given the opportunity of going back to work on production?

A. To the best of my knowledge, it is.

84 Q. Is it not true, Mr. Erwood, that it is your custom and practice to permit Supervisory employees to go back to work on production?

A. Yes.

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Q. And that the reason Oscar Owens was not permitted to go on production was because of his Union activities?

A. That's right.

Trial Examiner Feiler: Off the record.

(Discussion off the record.)

Trial Examiner Feiler: We will take the lunch hour now.

(Thereupon, a recess was taken until 2:00 o'clock p. m.)

85 After Recess.

(Whereupon the hearing was resumed, pursuant to the recess, at two o'clock p. m.)

Trial Examiner Feiler: On the record.

ROBERT ERWOOD,

resumed the stand, was examined and testified further as follows:

Direct Examination (Continuing).

Q. (By Mr. Citrin) Mr. Erwood, following the termination of employment of Oscar Owens, did you have a talk with Mr. Owens?

A. Mr. Owens came down to my office, I don't remember whether it was the same day or the next day.

Q. Did you have a talk with him subsequently?

A. Yes, I had a talk with him.

Q. And at that time he asked you for a job on production, is that true?

A. That's right.

Q. Is it not true that you told him that he could get a job anywhere in the City of Detroit, but that he was not going to work at the Budd Manufacturing Company?

A. I don't know that I used those words or not, but I probably did.

Q. Now, the subpoena that was served upon the Budd Company requested a list of all Supervisory employees in the Trim Shop Department during the months of March, April and May, 1944?

86 A. Yes.

Q. Now, the names you gave were Edward Farr,

Norman Marshment, Harold Moss, John Spalding, William Cadieux, is that correct?

A. That's right.

Q. Now that list would also include Fred Schieman, would it not?

A. For the period he was there.

Q. Pardon?

A. When he was there, yes.

Q. He was there in March, all of March, and part of April, 1944, was he not?

A. That's right.

Q. Now do you have those records with you?

A. Yes, I have them.

Q. Now you took out the records of the Supervisory employees in the Trim Shop during those three months of 1944, is that true?

A. Yes.

Q. Now in reading that list earlier at the hearing, I believe you stated that William Cadieux first became an Assistant Foreman in Department 12, November 9, 1944, is that correct?

A. No, let's see. Just a moment. Yes, I believe that is right. We show him classified as an Assistant Foreman on November 9, 1944. He had been a Leader prior to that.

Q. Well, when was he a Leader in the Trim Shop, Department 12?

87 A. He apparently became a Leader on 5-11-44.

Trial Examiner Feiler: The previous date we had was 7-6-44.

The Witness: Wait a minute now. Yes, Mr. Meder was reading that off.

Trial Examiner Feiler: All right. What is it now?

The Witness: It isn't quite right. I don't think. I find a Leader rate here on 5-11-44, and I believe that is right.

Q. (By Mr. Citrin) Now you say he did not become a Supervisory employee, rather, an Assistant Foreman until November 9, 1944?

A. That is what the record shows, yes.

Q. Now in getting the names of the Supervisory em-

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ployees in the Trim Shop Department, did you also include Leaders?

A. No.

Q. Well, the subpoena stated three months, March, April and May, 1944, and according to what has been read off, Mr. Cadieux did not become an Assistant Foreman until November 9, 1944. How did his records happen to come here?

A. I am sure I don't know, except I know he is a Foreman now. I pulled all the Foremen on it, that's all. I merely asked the Supervision out there to give me a list of all the Foremen. They did. This man was in the group.

Q. Is it not true that Cadieux became an Assistant
88 Foreman in April, 1944?

A. Not to my knowledge, he didn't.

Trial Examiner Feiler: Is there some question as to whether or not he did become a Foreman in April, is that it?

Mr. Citrin: There is in my mind.

The Witness: The records do not disclose it.

Trial Examiner Feiler: The only thing I could suggest is that when we do have an intermission, perhaps you can re-check with the people at the plant. You are just testifying from the records that you have, is that right?

The Witness: Well, the only thing about that is, if I were to try to go back and check whether or not he might or might not have been a Foreman back in April, it would probably mean I would have to pull clock cards, or something else, which would take some time.

Trial Examiner Feiler: Is there not someone who had supervision over the actual operations in that department whom you could ask about this point?

The Witness: Yes, we can ask the Superintendent. I do not know whether he can answer it off-hand, though, without checking the records.

Trial Examiner Feiler: Suppose you do as I say. When we have a break, let us know.

Q. (By Mr. Citrin) Well, Norman Marshment became a Foreman in Department 12 on April 15, 1943, is that correct?

A. March 15, 1943.

89 Q. March 15. And to the present time he is still a Foreman in Department 12?

A. That's right.

Q. Which is the Trim Shop Department?

A. That's right.

Q. Harold Moss became an Assistant Foreman in Department 12, November 9, 1944, is that correct?

A. No.

Trial Examiner Feiler: Who is this Moss?

Mr. Citrin: Harold Moss.

The Witness: No, that is wrong.

Trial Examiner Feiler: I have March 26, 1943.

The Witness: Harold Moss has been a Foreman off and on for ten years, but our records show—

Mr. Citrin: March the 26th, 1943.

Trial Examiner Feiler: Department 12.

The Witness: Well, yes, but he was a Foreman before that. He actually became a Foreman, according to this, back in 1937.

Q. (By Mr. Citrin) But as far as Department 12 goes, he was an hourly Foreman in that department on March 26, 1943?

A. Yes.

Q. And he did not become a salaried Foreman in that department until January 1, 1945?

A. No, that is not right. The last time he became a salaried Foreman in 12 Department was January
90 1st, 1945, but he was a salaried Foreman in 12 Department, July 26, 1938.

Q. Well, now, from March 26, 1943, when he was transferred back to Department 12 from Department 7, he was transferred back as an hourly Foreman, isn't that correct?

A. That's right.

Q. So that from March 26, 1943, to January 1, 1945, he was an hourly Foreman?

A. That's right.

Q. Now, John Spalding was an Assistant Foreman in Department 12 on November 13, 1942, is that correct?

A. November 13, 1942, he was an Assistant Foreman, an hourly rated Assistant Foreman.

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Q. What is the difference between an Assistant Foreman and a Foreman?

A. Assistant Foremen has been our hourly Foremen. The first line Foreman has been the salaried Foreman. We call our Assistant Foremen—or we called our hourly Foremen, Assistant Foremen, and our salaried Foremen became Foremen.

Q. Now, then, during those three months of 1944, March, April and May, the Supervisory employees in Department 12 would consist of, then, Edward Farr, Norman Marshment, Harold Moss, John Spalding and Fred Schieman during the period of time that he worked there?

A. That's right.

Q. Now, what reason was assigned for the demotion
91 of Fred Schieman from a Supervisory employee?

A. Reducing the force.

Q. What force was being reduced?

A. Well, the productive employees had been reduced, and therefore it was necessary to reduce overhead, and we reduced Supervisors in and around the same period.

Q. Did you have any custom and practice that has followed in the reduction of the Supervisory force?

A. I didn't understand you.

Q. Does the Company have any custom and practice relative to the demotion of their Supervisors?

A. Yes, I don't know what practice you are talking about, though.

Q. Well, let us say that you had two Foremen in a department and one of them had to be let go, one worked in the department for ten years, one worked in the department for twelve years. Would that make any difference?

A. All things being equal, if the two men were of exactly the same caliber, then you would certainly use length of service as a basis of making the reduction.

Q. Now if you had to make a reduction in the Trim Shop Department of Supervision, would you reduce an Assistant Foreman or a Foreman?

A. I really can't answer that. I don't know the answer to it.

Q. Do you have any employment record of Fred Schieman?

92 A. Yes.

Q. When did Fred Schieman first start to work for the Edward G. Budd Company?

A. 1935, according to this record.

Q. And when did he first become a Supervisor?

A. Well, according to this it would be October, 1940.

Q. In what department?

A. Department 10.

Q. Now, is that an hourly rated Supervisor?

A. Assistant Foreman, hourly rated.

Q. When did Fred Schieman start working in Department 12?

A. On 3-26-43.

Q. Was that hourly rated or salaried?

A. No, that was salaried.

Q. What shift?

A. Days, I believe, according to this. You can't tell entirely by these employment records because they are shifted sometimes from days to nights.

Q. But he was on salary, is that correct?

A. Yes.

Q. That would mean that he was the Foreman in Department 12, is that true?

A. That's right.

Q. And that was March 26, 1943, I believe you stated?

A. That's right.

93 Q. Now Harold Moss was Assistant Foreman in the Trim Shop Department, March 26, 1943, is that true?

A. That is true.

Q. And he was Assistant Foreman?

A. Yes.

Q. And he was working on the same shift as Fred Schieman, is that not true?

A. I believe it is, yes.

Q. And in April, 1944, no change in employment status was made with reference to Harold Moss, was there?

A. No.

Q. Now you say that according to those records that you

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have, William Cadieux became a Foreman in Department 12, November 9, 1944?

A. That's right.

Q. And that is a Supervisory position, is that true?

A. Yes, Foreman.

Q. Now you allege in your Answer that you were at all times willing to reinstate Fred Schieman to his former position. Is that true?

A. No, that is not true.

Q. Is this statement correct: "Further, that the Company is willing to re-employ Schieman as a Foreman when an opening occurs which he is capable of fulfilling"?

A. Yes, that's right.

94 Q. Now Fred Schieman was a Foreman in Department 12?

A. Yes.

Q. On November 9, 1944, you took a production worker out of Department 12 and made him a Foreman, is that correct?

A. That's right.

Q. Why did you not call Fred Schieman at that time?

A. Because I told you that it was our practice to promote from the ranks, and there was a man among the ranks that could do the job.

Q. But here you had a Foreman who, according to you, was laid off merely because you did not have any work at that time, and that you state in your Answer at all times you were willing to re-employ when you had an opening. Do you mean what is said there?

A. Yes.

Trial Examiner Feiler: You did have an opening there for Foremen?

The Witness: But Mr. Schieman was not working for the Company. He was working for the Hudson Motor Car Company, and we had a man within the ranks that could fill the job. Had he been there, he undoubtedly would have been back on the job, but he chose rather to leave the Company than to accept a demotion; therefore we promoted another man.

Q. (By Mr. Citrin) Who made the decision to demote Fred Schieman?

95 A. The Supervisor that he is responsible to.

Q. Who is that?

A. Mr. Roberts.

Q. Now, Mr. Erwood, if I were to tell you that Cadieux became a Supervisory employee in April, 1944, rather than, as your records indicate, in November, 1944, could you tell me how we could determine which date is correct?

A. I should say this to you, that if he were—I presume you mean an hourly Foreman—if he were an hourly Foreman in April of 1944, then he must have been special-rated by the Time Department, because our records don't show it. Now it would not be too hard to find out whether or not he had been or not. But at least, if so, it must have been certainly of a temporary nature or they would have sent through a change of classification and rate.

Mr. Citrin: Mr. Examiner, with Mr. Erwood's permission, I would like to find out now.

Trial Examiner Feiler: Well, I asked Mr. Erwood to check on that when we had a break. If you think it is important at this point, we will have to call a recess. Can you proceed, leaving that matter open while Mr. Erwood checks the plant records this afternoon and brings them in? Could you do that?

The Witness: May I ask you a question off the record here?

Trial Examiner Feiler: Off the record.

96 (Discussion off the record.)

Trial Examiner Feiler: On the record.

Q. (By Mr. Citrin) Now, will you look at the record of John Spalding?

A. Yes.

Q. That indicates he was an Assistant Foreman in Department 12 from November 13, 1942?

A. Yes.

Q. Until January 1, 1945, when he went on salary, is that correct?

A. That's correct, when he was changed to a Trim Layout Engineer.

Q. So that in April, 1944, John Spalding was an Assistant Foreman in Department 12, is that correct?

A. That's correct.

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Q. And during that period of time Fred Schieman was a Foreman in Department 12, is that correct?

A. That's right.

Q. Did Roberts inform you that he was going to demote Schieman?

A. He didn't inform me of that, no. It wouldn't be necessary.

Q. Did you know that Schieman was being demoted?

A. I beg your pardon. Did you say promote or demote?

Q. Demote.

A. No, I didn't know he was going to be demoted,
97 neither did I know he was going to be promoted.

Q. Well, was Schieman's employment with the Company terminated?

A. Well, I presume it was on the 14th, the same as the other men.

Q. I do not think you are correct.

A. I know the employment clearance shows the same date, that is the 30th they were separated permanently from the pay roll, and I know also he went to work at the Hudson Motor on the 20th of April, so it could only be a matter of a few days.

Q. Did you have a talk with Mr. Schieman before his employment was terminated with the Company?

A. Well, I had a talk with him after it had been terminated. To the best of my recollection, he was in my office and talked to me once or twice.

Q. Is it not true that Mr. Schieman came into your office on Saturday the 8th?

A. April the 8th?

Q. That is right, 1944?

A. I wouldn't know.

Q. Is it not true that you had a talk with Mr. Schieman in which he informed you that Roberts was demoting him and he had a slip with him, and that you asked Mr. Schieman whether or not you could keep the slip for a few days, and that you would look into the matter?

A. I don't know about asking to keep the slip. I
98 told him I would be glad to talk to Mr. Roberts about it, yes. He was into my office after he had

received the clearance, talked to me about it. I said I would talk to Mr. Roberts.

Q. Now did you have a talk with Mr. Roberts?

A. Oh, yes.

Q. What was the substance of the conversation you had with Mr. Roberts?

A. I don't know. It couldn't have been very important. It was to the effect that Mr. Roberts was laying off the man that he could most afford to lay off.

Q. Well, who said that?

A. Mr. Roberts. In other words, he confirmed that he was laying off the right man. That is what I am trying to say.

Q. Well, how did he confirm that?

A. Well, I don't know how Supervisors confirm that sort of a thing. They certainly make an analysis of the individual and decide whether they are right or whether they are wrong. He apparently decided he was right.

Q. Well, did you ask him anything about it, did you come up to him and say, "How come Schieman is being laid off?"

A. I don't know what I said to him. I have talked to many, many Supervisors in our plant in the course of a day or a week, and as to any exact conversation I had with Mr. Roberts concerning Mr. Schieman, I couldn't tell you, except I did mention the fact that he was being laid off, was there anything more that could be done
99 for the man. At the time there wasn't. So the clearance was permitted to go on through, it had already gone through.

Trial Examiner Feiler: Do you remember if Roberts told you on what basis he had decided to take this action with regard to Schieman?

The Witness: Well, he claimed Mr. Schieman didn't have as much experience, that is, as much all-around experience as the other men involved. The other men all had sewing machine experience, whereas Mr. Schieman's experience in that department had been confined to assembly. Because the other men had both assembly and sewing machine experience, he preferred to let Mr. Schieman go rather than one of the other men.

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Q. (By Mr. Citrin) Now at the time Schieman first became a Supervisor in Department 12, which was March 26, 1943, what was his salary at that time?

A. I don't know. I believe I have it.

Mr. Meder: May I have that question?

(Question read.)

A. I know what his salary was when he left us. It is a little difficult to find out what it was at the time you are speaking of. I would only have the salary when he left us.

Q. His salary when he left was $360.00 a month, was it not?

A. That is correct, yes.

Q. Well, who would know whether or not Mr. Schie-
100 man received any salary increases from March 26, 1943, to the date that his employment was terminated?

A. Well, Mr. Schieman would, and I certainly wouldn't deny it if he said he had them.

Oh, yes, I have it, I am sorry. Mr. Schieman received a salary of $360.00 per month four days after going into this department.

Mr. Meder: As a Supervisor?

The Witness: As a Supervisor. He received no increases thereafter.

Q. (By Mr. Citrin) What was his rate when he went into the department?

A. Well, it was $300.00 and it went to $360.00. Wait just a minute. May I correct that?

Trial Examiner Feiler: Certainly.

The Witness: That is not right. He received an increase from $300.00 to $360.00 by virtue of an automatic increase which compensated Supervision for the increase from the forty to the forty-eight-hour work week, and therefore actually he received no increase after 9-16-42.

Mr. Meder: May we explain that a little bit to you, Mr. Examiner?

Trial Examiner Feiler: I think I understand. That was a wage adjustment in lieu of paying an extra rate for overtime. He was not being paid by the hour, so you
101 adjusted his salary upward.

Mr. Meder: That is right.

Q. (By Mr. Citrin) Do you know what salary Norman Marshment was getting in April, 1944?

A. No. I know what salary he is getting now. He is receiving $390.00 a month now. Well, now, just a moment here. Maybe I can't answer that. Yes, Mr. Marshment was receiving $1.44 per hour.

Trial Examiner Feiler: When?

The Witness: From March 15, '43, up to, through the period you are talking about, up to the end of '44.

Q. (By Mr. Citrin) So that Mr. Marshment was an Assistant Foreman in the Trim Shop Department in April, 1944, is that correct?

A. That's correct.

Q. So that in March, April and May of 1944, according to your records, the following five men were Supervisory employees in the Trim Shop Department: Edward Farr, Norman Marshment, Harold Moss, John Spalding and Fred Schieman?

A. That's correct.

Q. And of those five, Norman Marshment, Harold Moss, and John Spalding were Assistant Foremen?

A. That's correct.

Q. And the only one of that group who was let go because of the claimed reduction in force was Fred
102 Schieman?

A. That's right.

Q. Did you ever receive any complaints about Fred Schieman's work?

A. No, sir.

Mr. Citrin: I think that is all, Mr. Examiner.

Trial Examiner Feiler: Have you any questions, Mr. Konopka?

Mr. Konopka: I have no questions.

Trial Examiner Feiler: All right, sir.

Cross-Examination.

Q. (By Mr. Meder) This information that you have testified to that you received from Supervisors relative to FAA and the activities of the FAA, was this information,

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if you know, secured by the Supervisors from sources inside the plant, or where did it come from?

A. Any information that our Supervision has received has been by virtue of voluntary information given to them, not by any solicited—not by the Company soliciting information or by the use of any outside organizations to obtain it.

Q. Did you have any member of Supervision who was a member of the FAA whom you requested to give you information as to what was going on in the FAA?

A. No, sir.

Q. There was a very brief statement made here about a demonstration after Owens was laid off. Did you mean a demonstration in the nature of a strike, or when
103 these men came down to your office to see you?

A. Apparently came down to the employment office to talk to us.

Q. What happened when you finished talking?

A. They went back to work.

Q. This man Stanovich whom you mentioned as having been with the Supervisors who came down on that occasion, did you discharge him?

A. No.

Q. What happened?

A. Well, Al Stanovich came down with a group of Foremen. They apparently needed somebody to speak for them, and Al Stanovich finally got up courage and asked a few questions himself. Because he did ask questions, he apparently became a little embarrassed and a little bit heated, and said a few things he didn't mean to say, and interrupted a couple of times. Finally I said, "If that is the way you feel, you are fired too". After it was all over with, Al said, "Am I fired?" I said, "No, go back to work".

Q. Did he go back to work?

A. Yes, sir.

Q. He is still working for you as a Supervisor?

A. Yes.

Q. How about the rest of the Officers of the Union that have been mentioned here, are they working for you?

104 A. Yes.

Q. As Supervisors?

A. Yes.

Mr. Meder: I would like to ask the Board to furnish me, if you will, please, with the original charge that was filed by the FAA. I notice the charge upon which we are proceeding is the Second Amended. May I have the original, please, and also the First Amended.

Counsel for the Board has handed me the original Charge filed by the FAA in this case, and also the Amended Charge. I call attention to the fact that the original Charge is dated April 17, 1944, and mentions only Oscar Owens as having been discharged for the reason—reading from the Charge—"that he had joined and assisted a labor organization known as Foreman's Association of America, Chapter 77, for the purpose of collective bargaining and other mutual aid and protection."

I further call attention to the fact that the Amended Charge, which has been handed to me, seems to have been sworn to, or states it is sworn to on April 30, 1945. The second paragraph reads:

> "The said Company did discharge on April 8, 1944, Fred Schieman, 20301 Elkhart, Detroit 24, Michigan, and did discharge on April 14, 1944, Oscar Owens, 1327 West Boulevard, Berkley, Michigan, for the reason that he had joined and assisted a labor organization know as Foreman's Association of America,
> 105 for the purpose of collective bargaining and other mutual aid and protection."

I have no further questions of this witness at this time. Of course, when the time comes for the Company to put in its case, I shall use this witness. However, I desire at this time to move that if the Answer of the Company as filed does not comply with the testimony that the Board has developed from this witness, then I ask to have the Answer amended to comply with the testimony that the Board has brought out from this witness.

Trial Examiner Feiler: Well, I would suggest that perhaps you better hold that motion until the testimony is all in. We do not know what will develop.

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Any further questions of this witness? You are excused.
(Witness excused.)
Trial Examiner Feiler: We will take a five-minute recess.
(A recess was taken.)
Trial Examiner Feiler: On the record.
Next witness.

OSCAR OWENS,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Citrin) What is your name?

106 A. Oscar Owens.

Q. Where do you live, Mr. Owens?

A. 1327 West Boulevard, Berkley.

Q. Were you ever employed by the Edward G. Budd Manufacturing Company?

A. Yes, sir.

Q. Do you recall the date that you were first employed by the Company?

A. The first of December, 1936, at noon.

Q. What job were you first hired in as?

A. Metal Inspector on Packard doors.

Q. Now, did you ever become a Supervisor employee?

A. I did.

Q. About what time was that, do you recall?

A. Sometime in 1939, I believe.

Q. When you first became a Supervisory employee in 1939, do you recall whether you were paid on an hourly basis?

A. I was.

Q. Were you ever put on a salary basis for the Company?

A. Yes, sir.

Q. Do you recall when that was?

A. I don't know just how long it was after that.

Q. Well, do you know who it was that put you on salary?

A. Floyd Turk.

Q. Who was he?

107 A. Superintendent.

Q. And you know what your salary was at that time?

A. Well, he told me it would be $40.00 a week, and I said, "No deal." So he raised it to $50.00. That is the way I started.

Q. At the time you were the Supervisor at the Budd Manufacturing Company, did you become interested in any labor organization?

A. I did.

Q. And what organization was that?

A. The FAA.

Q. That is the Foreman's Association of America?

A. That's right.

Q. Did you become a member of the Foreman's Association of America?

A. Yes.

Q. Do you know whether or not any meetings were held by the Foreman's Association?

A. There were. The first meeting was held at my basement.

Q. Do you recall when that was?

A. I don't know the exact date. It was a couple of weeks before Easter, I know that much.

Mr. Meder: May I ask, Mr. Examiner, if he means the Supervision of Budd, or the first meeting of the FAA?

Trial Examiner Feiler: You mean that first meeting,

108 you are referring to the first meeting of people interested in organizing the Budd Plant, is that right?

The Witness: We are referring to Budd at all times.

Trial Examiner Feiler: All right.

Q. (By Mr. Citrin) And this was a few weeks before Easter, you said, in 1944?

A. I think that is about the exact date.

Q. Were any Officers elected at that time?

A. There were.

Q. Who were they?

A. Myself, Ernest McNary, Louis Harrison.

Q. Now, following this meeting that was held at your

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house, were you questioned by Management relative to the Union?

A. I was.

Q. Who was present at that meeting?

A. Mr. Erwood, and Mr. Walton, at the first one.

Q. Well, anyone else present?

A. Not the first time. We was called in at least four or five different times.

Q. Well, when you say "We" who do you mean?

A. McNary, Harrison, and myself.

Q. Now at the first meeting that you had with Management, was Otto Czischki there?

A. Yes, he was. He was called in by mistake.

Q. What do you mean when you say he was called in by mistake?

109 A. He didn't have anything to do with it.

Q. You mean he did not have anything to do with the Union?

A. No.

Q. Well, what was said at that meeting?

A. Well, that was a feeler. They wanted to know what we thought of the—

Mr. Meder: (Interposing) I ask the statement "that was a feeler" be stricken from the record as a conclusion on the part of the witness.

Trial Examiner Feiler: What we are interested in now is what was actually said and who said it, and what was replied to it. Do you know what I mean?

The Witness: Walton done most of the talking.

Trial Examiner Feiler: What did he say?

The Witness: Asked us what we thought of it.

Trial Examiner Feiler: Of the Union?

The Witness: Yes.

Mr. Meder: May I have that statement read?

(Answer read.)

The Witness: I told him I thought it was a good thing, that it would do us all a lot of good. He disagreed with me. He kept wanting to know—

Mr. Meder: (Interposing) I ask the statement, "He disagreed with me," be stricken from the record as a conclusion.

Trial Examiner Feiler: Granted. What did he say?

110 The Witness: Wanted to know what good it was going to do us, what we expected to derive out of it. I said I for one had been in the shops a long time, "I am getting up in age and I would like to have a little job security." And he asked us if we belonged to it. We said Yes. "Well," he said, "You have kept it very quiet. You have really kept your cards under the table." I said, "No, I disagree with you. I don't think we have tried to keep it quiet. It was all voluntary. There was no organizers in the plant. Everybody that belonged to it or joined it done it of their own free will and accord. Nobody was forced into it." So that is all they wanted to know. Nothing was said about getting out of it at that time.

So we went back out in the plant. In a couple days we were called back in again, the three Officers, myself, Harrison and McNary.

Trial Examiner Feiler: Incidentally, what office did you hold?

The Witness: Mr. Walton's and Mr. Erwood's office.

Trial Examiner Feiler: No, what office did you hold in the Association then, this Group?

The Witness: I was temporary President.

Trial Examiner Feiler: What happened at that meeting?

The Witness: We went out the second time, we were asked to resign.

Trial Examiner Feiler: Who asked you?

111 Mr. Erwood: I didn't know what he was talking about. I said, "What do you mean, resign?" I said, "I like my job pretty well. I think I am doing all right. I think I am doing a good job." "Well," he says, "You either got to resign as Officers of the Union or resign from the Company." He offered to give us our two weeks' vacation pay. Mr. Harrison, he was on hourly rate, he wouldn't get no vacation pay. We told him we couldn't give him no answer, that we wasn't put in there that way, and it would take time for us to get out.

So we went back out in the plant again, and were called back in the third time. "What do you fellows intend to do?" Al said. Well, we hadn't given it much thought. This time I done most of the talking. "Well, when do you

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intend to resign?" he said. "Well," I said, "I will tell you, Al, if you want to pay me off and state on the pay-off what you are paying me off for, I will take it." Mr. Erwood looked around in his desk and he couldn't find no carbon paper to write the pay-off. And he said, "You fellows can stay in here all day. I want you to make up your mind what you are going to do. I got to have an answer."

So they were going to leave the office, leave it to us fellows. We told them we didn't want to deprive them of their office, we would go outside. They wouldn't hear to it. They wouldn't stand for that at all. So we went outside. We talked for ten or fifteen minutes and came back in. We made our decision. I asked them if they
112 wanted it in writing, we intended to resign as Officers.

Q. (By Mr. Citrin) When you say "we" went out, who do you mean?

A. Harrison, McNary and myself.

Q. And you talked over the question as to whether or not you were going to resign as Officers of the Union?

A. That's right.

Q. Were you told by Mr. Erwood or Mr. Walton that you did not resign—

Mr. Meder: (Interposing) Just a minute. I will have to object to that kind of question. This is his witness and that is a leading question. I hate to interrupt in the middle of a question, but he can ask the witness what he was told.

Mr. Citrin: I do not see how the question can be ruled on. It is not finished.

Mr. Meder: It has gone far enough. It is evident it is a leading question.

Trial Examiner Feiler: I will not allow it at this time, but it may be necessary when the witness' mind is exhausted. Suppose you see what can be gotten without leading questions.

Q. (By Mr. Citrin) How did this question about resigning from the Union come up?

A. He didn't want the Union in there.

Q. Who did not want the Union in there?

A. Mr. Walton.

113 Mr. Meder: I object to that. That is a conclusion on the part of the witness unless he means Mr. Walton made that statement. If he did that, I do not object to it. I move the answer be stricken.

Trial Examiner Feiler: Motion granted. What did Walton actually say about the Union?

The Witness: "You fellows cannot belong to it and work for Budd."

Q. (By Mr. Citrin) Did Mr. Erwood say anything?

A. No, Mr. Erwood sit there and took it all in.

Q. Now is this the time that the question about resigning from the Union came up?

A. Yes, sir.

Q. Was anything said about resigning from the Union?

A. After we went out and talked, came back in, I told him we were ready to resign.

Q. How did you happen to talk about resigning from the Union?

A. Well, we were all interested in our jobs.

Q. Well, had anything been said about resigning from the Union?

A. Well, they told us we would have to resign or we couldn't work there any longer.

Q. Who told you that?

A. Mr. Walton.

Q. Was Mr. Erwood present at that time?

114 A. He was.

Q. Now, what was it that you were told again?

A. That we would have to resign or we couldn't work there.

Q. Following that, that was when you left the office?

A. That's right.

Q. And the three of you talked it over and decided to resign as officers, is that correct?

A. That is right.

Mr. Meder: May I hear the question and answer, please?

Trial Examiner Feiler: Read it.

(Question and answer read.)

Q. (By Mr. Citrin) Now following your decision, what did you do?

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A. We came back in the office, told them that we had made up our minds to resign.

Q. And who was present at the office at that time?

A. Mr. Erwood and Mr. Walton.

Q. To the best of your recollection now, what specifically did you tell them?

A. I just told them we had made up our minds to resign, asked them if they wanted it in writing.

Q. To resign as what?

A. As officers.

Q. Did you subsequently resign as officers?

A. We did on the following Sunday.

115 Q. Did anything occur on that Sunday?

A. We just went in and put our case before the members and told them what we was up against, and that we had turned in our resignation.

Q. You say you put your case before the members; where was this?

A. Barlum Tower.

Q. Before the members, who do you mean?

A. Everybody that belonged to the Local, that was there, they wasn't all there.

Q. You mean the Supervisory employees of Budd's who belonged to the Local?

A. That's right.

Q. You had a meeting at the Barlum Tower?

A. Yes, sir.

Q. At that meeting you stated your case before the members, is that it?

A. Yes, sir.

Q. At that time you resigned as temporary Vice-President of the Local?

A. They accepted our resignation.

Q. Now following your resignation as an Officer of the Union, were you questioned further by Management as to whether or not you belonged to the Union?

A. No.

116 Q. At this meeting that you are talking about, that was held at the Barlum Tower, what date was that, do you recall?

A. I don't remember the exact date.

Q. Well, was it before your employment was terminated?

A. Oh, yes.

Q. Now your employment was terminated on April 14, which would be a Friday. Now the Sunday before that was April 9, and it was Easter Sunday. Was a meeting held on that date?

A. No.

Trial Examiner Feiler: Was it held before that date?

The Witness: Yes, it was.

Trial Examiner Feiler: Do you know about how long before?

The Witness: I don't remember the exact date.

Q. (By Mr. Citrin) Well, this Sunday meeting at the Barlum Tower, that was held after the meeting at your house, is that correct?

A. Yes, sir.

Q. And it was held before Easter Sunday and before your employment terminated, is that correct?

A. Before my employment terminated, yes, sir.

Q. Now how was your employment terminated, by whom, do you recall?

A. Bill Montee.

Q. And who is Bill Montee?

117 A. Supposed to be the Superintendent.

Q. What did he say to you, if anything?

A. Came out to me at fifteen minutes of three, he and Mr. Gilbert. They run everybody out of the office and called me in the office.

Q. Who is Mr. Gilbert?

A. He is Assistant to Bill Montee. So I went in, and Mr. Gilbert stood at the door, wouldn't let nobody in. Montee sat down at the desk and he just handed me a pay-off slip, and says, "You are all done. Your check will be ready at three o'clock."

Q. Now did you say anything to him at that time?

A. Yes, I asked him if that was customary.

Q. What did you mean by that?

A. That ain't the way we did the rest of the employees; we usually gave them a little notification. So I asked him if that was customary. He said, "In this case, yes." "Well," I said, "This don't come from you." He ad-

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mitted it. He said, "Well, I know. You know what it is all about." That is all that was said between Mr. Montee and me. So I went out and told them I was all done, and they didn't believe it, McNary and Harrison. So I showed them, and went on over to the paymaster's office, the employment office, told them I wanted my check. They wanted my badge, and I told them I didn't have any.

"What do you mean, you haven't got a badge?" I
118 said, "I haven't had a badge in five years." "How are you getting in and out?" "Through the gate." "I can't understand that. You must have had a badge." "No, I didn't have a badge." And they couldn't find any record where they had issued me a badge.

So he said, "Well, you can come back tomorrow and get your check." I said, No, that wasn't in the agreement, that I would take it now. So Joe Harrington went up and got it. They gave me my check to the 15th or the 30th, I don't know which it was. Anyway, they paid me for the rest of the month and gave me a two weeks vacation check. I had money in bonds and I demanded that. "You'll get it tomorrow." "I will get it now," I said. I got it.

And in the contract it says when you are laid off, if I am not mistaken, that you can carry your hospitalization for thirty days. So I wanted to pay another month's hospitalization. Nobody would take it. I said, "Am I laid off or am I fired?" "You are laid off."

Q. Well, whom did you ask that of?

A. Joe Harrington.

Q. Who is he?

A. He is in the employment office. He said, "You are laid off." I said, "Why can't I pay another month's hospitalization? I intend to put my wife in the hospital." He said, "We can't take it." I said, "I've got until the
119 30th of the month. I'm going to put it in. I want a slip to put her in the hospital." I got it. So I put my wife in the hospital, got my bills, paid the hospital bills. A couple months after that, they sent me a letter to come out and get my check for hospitalization, so I went out.

Q. This Sunday meeting that was held at the Barlum Tower, what time of the day was that held, do you know?

A. It was held in the afternoon.

Q. Do you know if Management in Budd's knew you were to this meeting at the Barlum Tower?

Mr. Meder: I object to that, no proper foundation for that question.

Trial Examiner Feiler: I will allow it. Answer the question.

A. I don't know about that meeting, but there was a meeting, and I told them I was going to the meeting, and I took off at twelve o'clock.

Q. This was on a Sunday?

A. Yes.

Q. Whom did you tell you were taking off at twelve o'clock?

A. I told—well, I told Bob and Walt when I was out in the office. They said it could be arranged. So I told Bill Montee, after I went, I was going home at twelve o'clock. He said Okay.

Q. This was the meeting where you resigned as an Officer?

A. That's right.

120 Trial Examiner Feiler: That is that same meeting at the Barlum Tower, is it not?

The Witness: Yes.

Mr. Meder: Is it?

Trial Examiner Feiler: He says Yes.

Q. (By Mr. Citrin) Now after you got your pay-check on April 14, did you talk to anyone from the Company?

A. I left there and came right down to the CIO Local.

Q. What Local was that?

A. I think it is 306.

Q. Local 306. Who did you talk to over there?

A. Talked to Smitty. He is President of the Local. And he said to come in and see him the next morning. So I went in to see him and he sit down on the phone and called the Company. I don't know whether he talked to Mr. Walton or talked to Mr. Erwood. So when he got through he told me they told him to keep his hands off.

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Q. Did he tell you anything further?

A. Well, he told me—

Mr. Meder: (Interposing) Well, now, if you please, we would not be bound by anything that this President, apparently, of Local 306 said. There was nobody there from the Company at the time. I think it is purely hearsay testimony, what Mr. Schmidt may have said.

Mr. Citrin: Mr. Examiner, if you will just permit
121 me to ask a few questions, I think its relevancy would become apparent.

Mr. Meder: It is not a question of relevancy alone. It is a question of hearsay. He admits he does not even know who "Smitty" talked to, apparently.

Mr. Citrin: Well, he said he was talking, apparently, to Walton or Erwood.

Trial Examiner Feiler: Are you trying to bring out something that this fellow Schmidt reported back from the telephone conversation?

Mr. Citrin: That is right.

Trial Examiner Feiler: Were you present when this telephone conversation was made to the Company?

The Witness: Yes.

Trial Examiner Feiler: Do you know who Schmidt talked to at the other end?

The Witness: I couldn't say.

Trial Examiner Feiler: You just heard him call the Company?

The Witness: Yes.

Mr. Meder: Renew the motion.

Trial Examiner Feiler: I will have to sustain it this time.

Q. (By Mr. Citrin) After you left the plant on April 14, did you ever go back to the Budd Manufacturing Company?

122 A. Yes, I went back the next morning.

Q. How come you happened to go back there?

A. Because I came back to see Smitty and he told me that he had talked to Bob and Bob wanted to see me.

Q. By Schmidt you are referring to whom?

A. That is the President of Local 306

Q. When you speak of Bob, to whom are you referring?

A. Mr. Erwood.

Q. And so I believe you stated that Mr. Schmidt told you that Mr. Erwood wanted to see you?

A. That's right.

Q. Now when did this conversation between you and Mr. Schmidt occur?

A. That was the next day or the day after.

Q. Was that following this telephone conversation?

A. Yes.

Q. So that after Mr. Schmidt hung up the telephone, he told you Mr. Erwood wanted to see you?

A. No, he told me to come over and see him the next morning.

Q. Mr. Schmidt told you to come back and see him the next morning?

A. Yes.

Q. All right. Now did you go back to see Mr. Schmidt?

A. I did.

Q. What did he tell you at that time?

123 A. He said Mr. Erwood wanted to see me.

Q. Did you go over to see Mr. Erwood?

A. I did.

Q. Who was present at that time?

A. When I talked to Mr. Erwood?

Q. Yes.

A. Just he and myself.

Q. What was the substance of your conversation?

A. I asked him if he wanted to see me. He said No, did I want to see him? I told him, I said, "Well, I got about seven and a half years seniority." I says, "I don't see any reason why I shouldn't go back to work as an Inspector." "What do you want to go back to work for less money for?" I said, "You teach your Supervisors to accomplish their objective." "Yes." "I still think I could accomplish mine."

Q. Well, did you ask Mr. Erwood for a job on production?

A. I asked him for a job on Inspection, where I should have rightfully gone.

Q. What did he tell you?

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A. He says, "I can get you five or six jobs in thirty minutes." I said, "I don't need anybody to get me a job." He said, "Well, you are not going back in there." That was all of our conversation.

Trial Examiner Feiler: Did he give you a reason why?

The Witness: No, sir.

Q. (By Mr. Citrin) When he said, "You are not
126 going back to work in there," what did he mean by that?

Mr. Meder: "What did he mean by that?" I object to that sort of question.

Trial Examiner Feiler: Sustained.

Q. (By Mr. Citrin) You asked Mr. Erwood for a job on Inspection, is that right?

A. That's right.

Q. Did you get a job on Inspection?

A. I did not.

Q. Was there any reason given to you as to why you could not go to work on Inspection?

A. No, sir.

Q. Were you refused the job on Inspection?

A. I did not.

Trial Examiner Feiler: Listen to the question.

Mr. Meder: He has already said twice he was refused a job on Inspection, Mr. Examiner.

Trial Examiner Feiler: You were refused that job on Inspection?

The Witness: I thought he said did I refuse?

Trial Examiner Feiler: No, you were not allowed to take the job?

The Witness: I wasn't allowed to take anything. I was all done.

Q. (By Mr. Citrin) At the time your employment
125 was terminated, what job were you doing for the Budd Company?

A. I was working on the boiler casing there.

Q. How long had you been on that job?

A. Oh, I imagine about three weeks.

Q. Now prior to that, what job had you held?

A. Side rack assembly.

Q. You were Supervisor on the side rack assembly?

A. Yes, sir, that is a cargo truck.

Q. Now, how did you happen to be transferred to the boiler job?

A. I went over there, took the night shift. The man that was on there had to go to the hospital. He had a cancer. And then they took the night shift off. I went on days. The man that was on there on days, they put him up on the Aircraft job, the man that was up on the Boiler, his name was Leo Vultee.

Q. (By Mr. Citrin) Do you know if anyone took your place as Supervisor on the side rack job?

A. Yes.

Q. Do you know the name of that employee?

A. No, I don't know. He was a young fellow up on the fourth floor.

Q. Well, now, to refresh your recollection, does the name Ernest Self mean anything to you?

A. That is his first name. I wouldn't swear to his last name. Ernie, I remember we called him.

126 Q. Some fellow, then, by the name of Ernie took your place on the side rack job?

A. That's right.

Q. Now do you know whether or not he had been a Supervisory employee longer than you had?

A. I know he hadn't.

Q. He had not been?

A. No.

Mr. Citrin: No further questions.

Mr. Meder: No questions.

Trial Examiner Feiler: Mr. Konopka?

Mr. Konopka: One minute, please.

Trial Examiner Feiler: Surely.

Any further questions.

Mr. Konopka: No further questions.

Trial Examiner Feiler: All right, step down, thank you.

(Witness excused.)

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FRED SCHIEMAN,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Citrin) What is your name?

A. Fred Schieman. Fred P. Schieman.

Q. Where do you live?

127 A. 20301 Elkhart.

Q. Were you ever employed by the Edward G. Budd Manufacturing Company?

A. I was.

Q. Do you recall when it was you were first employed?

A. I think in 1944, I am not sure. I don't know the date.

Q. What job did you have at that time?

A. I hired in as a Metal Inspector on the Packard door.

Q. Now, do you recall when it was that you became a Supervisory employee?

A. I was in there about three months, and I was made Quality Supervisor, transferred from Inspection to Quality Supervision. I don't recall the exact date.

Q. Do you recall when it was that you became a Supervisor in Department 12?

A. In Department 12, I was up there about fourteen or fifteen months, I don't know exactly what date. That is the Trim Shop?

Q. That is right.

A. I don't know the exact date.

Q. Well, your personnel card indicates it was March 26, 1943. Will you say that date was approximately correct?

A. Yes, I would say that was okay, because I couldn't tell you the exact date.

Q. Now, in the Trim Shop Department, were there any employees who were under you?

128 A. Well, I was a Foreman, Harold Moss was an Assistant Foreman, and Jack Spalding was nothing. Jack Spalding was demoted because he couldn't handle the job, so I was told, when I went down there.

Q. Harold Moss was Assistant Foreman under you?

A. Assistant Foreman under me.

Q. Worked the same shift as you?

A. Same shift.

Q. What did you say about Spalding?

A. Spalding had the job I did, worked in the Trim Shop, and Roberts called me down there and said I was recommended as a good man, to go up there and see what I could do with that Trim Shop. He said, "I have a man up here"—I didn't know the man, Jack Spalding; he said he couldn't handle the job.

Q. Now prior to the time that you went into the Trim Shop Department, had you been Foreman in any other department?

A. Yes, rack job, in Department 10, I think it was up on the cargo wagon.

Q. Now you say Roberts is the one that transferred you to the Trim Shop Department?

A. No, Albert Diebelt called me over and asked me what I could do with it. I said I would if there was more money in it. He said, "You go and show me where it can pay more money and I will give it to you."

Q. Roberts told you that?

129 A. That is right.

Q. During the time you went to work for Budd's in 1935 until April 8 or April 10, 1944, had you ever been laid off by the Company?

A. Well, for a week maybe at a time, but I worked in other departments most of the time. When there was a lay-off, they put me in another department, as far as I can remember.

Q. Now how many employees were under you in the Trim Shop Department?

A. In the Trim Shop, I think there was about thirty girls, twenty or thirty girls, and I don't know how many men, and there was about sixty up in the sewing room.

Q. Sixty in the sewing room?

A. I imagine. Now I couldn't say exactly how many.

Q. Well, did you have charge of the sewing room also?

A. Harold Moss was an Assistant Foreman and I was a Foreman.

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Q. During the time that you were a Supervisor at the Edward G. Budd Company, did you ever become interested in any labor organization?

A. The only one I became interested in was the Foreman's Association.

Q. Now, did you become a member of the Foreman's Association?

A. I did.

Q. Did you attend the meeting that was held at Oscar Owens' house?

A. I did.

130 Q. About when would you say that meeting was?

A. A couple weeks before Easter, I don't know the exact date.

Q. What year?

A. 1944, I think it was.

Q. Now following that meeting at Oscar Owens' house, and following the time that you became a member of the Foreman's Association, were you ever questioned by Management about the Foreman's Association?

A. I was.

Q. Who was present at that time?

A. Mr. Montee, Mr. Roberts, Mr. Walton, Mr. Erwood.

Q. I see. Were any other employees there?

A. Mr. Farr and Mr. Moss.

Q. Mr. Farr and Mr. Moss?

A. They were.

Q. And do you recall what was said at that interview?

A. I don't recall what Harold said when they asked him how he felt about it. Mr. Walton said, "How do you feel about it, Fred?" I said, "The same as the rest of the men."

Q. Was there anything further said?

A. Yes, Mr. Walton said, "If you belong to it you better get out of it because we won't have a Foreman's organization in this shop," and he says, "If we do, I won't be here."

Q. Mr. Walton said?

131 A. Mr. Walton said.

Q. Was Mr. Erwood there at the time?

A. He was.

Q. Did Mr. Erwood say anything?

A. No, he did not.

Q. Well, following this interview that you had with Management, did you discuss the Foreman's Association with anyone?

A. Following that meeting?

Q. Yes.

A. Yes, I asked Norman Marshment to join it.

Q. You asked Norman Marshment to join it?

A. Yes.

Q. The Foreman's Association?

A. I did.

Q. What did Mr. Marshment say?

A. He told me—

Mr. Meder: (Interposing) Just a minute. We are not bound by what Mr. Marshment may have said. There is no charge here against us on anything along this line.

Trial Examiner Feiler: I am not sure at this point. I think I will allow it subject to a motion later on to strike. You may answer that question.

The Witness: He told me he wasn't interested in it.

Q. (By Mr. Citrin) Prior to this discussion you had with Mr. Marshment, had you done anything?

A. I left one of the applications on his desk.

132 Q. An application?

A. An application on his desk and Mr. Farr's.

Q. Who is Mr. Farr?

A. Well, I guess he was a Superintendent up there. I never did hear what he was up there, but I guess he was a Superintendent.

Q. Now following your leaving the application card and your asking Mr. Marshment if he was interested in joining the Union, did you have any conversations with Management?

A. Yes, I was called down to Mr. Roberts' office, and when I got down there, the first thing I said to him, "How about that raise? I think that department is paying pretty well." He said, "I am thinking of demoting you." I said, "No, I won't take a demotion. I will take a release first."

Trial Examiner Feiler: When was this conversation?

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The Witness: That I couldn't tell you. It was a couple of days before I got my release.

Q. (By Mr. Citrin) Now this was after you had been questioned by Management as to your feelings about the Foreman's Association, is that correct?

A. It was.

Q. And this was after you had approached Mr. Marshment and asked him to join the Foreman's Association?

A. It was.

Q. Do you know who took your place as Foreman
133 of the Trim Shop Department?

A. Well, I was going over to Hudson's one morning, and I ran into Alfred Cadieux. Alfred said, "I got your job up there."

Q. Did Cadieux take your job immediately?

A. That I couldn't say. I wasn't in the plant. I don't know.

Q. Well, do you know if anyone took your place immediately?

A. They told me Norman Marshment was going to take it.

Q. They told you Norman Marshment was going to take it?

A. Mr. Roberts told me that.

Q. Mr. Roberts told you Marshment was going to take your place?

A. Yes.

Q. Is this the same Marshment you had asked to join the Foreman's Association?

A. The same one.

Trial Examiner Feiler: What reason, if any, did Roberts give you for your demotion?

The Witness: He said he was going to reduce the force and he wanted a professional Trimmer in there.

Q. (By Mr. Citrin) Now he had been working in the Trim Shop Department for how long?

A. I thought about fourteen or fifteen months.

Q. During that period of time, did you receive any complaints about your work?

134 A. No, I received praise because I brought the thing up on a paying basis, over a hundred dollars a day over costs, and the records will show that at Budd's.

Q. When you say you received praise, praise from whom?

A. From Mr. Roberts, he told me I was doing a good job.

Q. During that time, was anything said to you about the fact that a professional Trimmer was needed in that department?

Mr. Meder: Just a minute. I object to these leading questions again. He is on his way.

Trial Examiner Feiler: Well, I will allow this one. You may answer that.

The Witness: No, nothing was said.

Q. (By Mr. Citrin) Now at this conversation that you had with Roberts relative to your demotion, did you say anything to him?

A. I told him I would rather take a release than take a reduction-in-force—take a demotion.

Q. Did he say anything to you?

A. He took me up to Joe Andrews and tried to get me a job on Timestudy.

Mr. Meder: May the record show who Joe Andrews is?

Trial Examiner Feiler: Yes, who is Joe Andrews?

The Witness: Joe Andrews is the Timestudy Man, that is what he was at that time, head of the Timestudy Department.

Mr. Meder: Now, may I have the previous answer?

135 Trial Examiner Feiler: Yes.

(Answer read.)

Q. (By Mr. Citrin) Was there anything further said between you and Mr. Roberts?

A. No, all I told Roberts when I left him, I said I would sooner take a release than take a demotion.

Q. Did you receive a release at that time?

A. I did, about a quarter to five, the same as Oscar, one night, I got a release signed by Mr. Roberts and Mr. Farr, and he handed it to me and he said, "Fred," he said, "I wouldn't let that be a quit-slip. I would take it down to Bob, because I think he will do something for you," he says, "You are too valuable to let go."

Q. Now, Mr. Farr, in referring to Bob—

A. Mr. Erwood.

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Q. —refers to Mr. Erwood?

A. That is right.

Mr. Meder: He is known as Bob to everybody?

The Witness: Sure is.

Q. (By Mr. Citrin) Did you go in to see Mr. Erwood?

A. I sure did.

Q. Did you have any conversation with him?

A. Why, I showed him the slip, and I said, "Bob, here is ten years of loyalty." And he said, "Are you in a hurry for that?" I said, "No." He says, "Let me
136 take it for a couple of days." And I came back a couple of days after and he says, "Well," he says, "I could send you right back in the plant," he said, "but you know what it would mean." And I said, "Give it to me," and I walked out and got my pay.

Q. What was it that he said to you again?

A. He said, "I could send you right back in the plant," but he says, "you know what it would mean." And that is as far as it went.

Q. What did you understand him to mean by that statement?

Mr. Meder: Just a minute; I object to what he may have understood him to mean. We are interested in testimony here as to what actually happened.

Trial Examiner Feiler: It is an ambiguous statement. I will allow it.

The Witness: Well, I knew what it meant. It meant I would be railroaded again, so I just walked out.

Q. (By Mr. Citrin) What did you mean, "railroaded again"?

A. I would be thrown out in a short time. They would pick on me and make it so miserable for me, I would have to get out. That is my definition of the thing.

Mr. Meder: I renew my objection, I move to strike that testimony. This witness now admits it is a conclusion.

Trial Examiner Feiler: I will sustain that now.

Q. (By Mr. Citrin) At the time you were in the office with Mr. Roberts, he told you that you were being
137 demoted because they were reducing the force and they wanted a professional Trimmer?

A. He did.

Q. Did you say anything to him?

A. I said, "I have handled the job all along," I said, "I don't know why I couldn't handle it now." He had a professional Trimmer in there before I went there and he had to throw him out.

Q. Did he say anything to you when you made that statement?

A. No, I don't recall whether he said anything then or not.

Q. Did you say anything further to him?

A. I did not.

Q. Now when you came back and saw Mr. Erwood and he told you there wasn't much he could do, did you talk to anybody else in the Company?

A. Yes, I talked to Mr. Walton.

Q. Did you go into his office?

A. I went into his office while I was waiting for my pay.

Q. And what was your conversation with Mr. Walton?

A. I told him I thought I was getting a dirty deal. He said, "I don't think so. Roberts talks well of you." I said, "Any man that can't look you in the eye when he talks to you is no damned good," and that is as far as the conversation went there.

Q. Did you tell Mr. Walton you were getting a dirty deal?

A. I did.

138 Q. Did you amplify on that statement?

A. Pardon?

Q. Did you say anything further?

A. No, not that I remember of.

Q. Did you ever tell Roberts or Erwood or Walton that you were being demoted because you belonged to the Foreman's Association?

Mr. Meder: Now, I think that is a leading question once more. I am sorry to interfere before the question is completed, but that is a leading question; objected to for that reason.

Trial Examiner Feiler: I will sustain the objection. Rephrase it.

Q. (By Mr. Citrin) In order to refresh your recollection, Mr. Schieman, do you recall whether or not you ever told Mr. Roberts—

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Mr. Meder: (Interposing) I am sorry to object in the middle of a question again; I appreciate I should not do it, but there has certainly been no evidence the witness' recollection needs refreshed. He seems to be going along here and testifying very nicely. I object to the question for that reason.

Trial Examiner Feiler: You may object to this one, too, if you like. Was the Union ever mentioned in your conversation with Roberts?

The Witness: Yes, it was.

139 Trial Examiner Feiler: What was said by whom?

The Witness: I told Roberts I knew why I was getting this deal, and I said it was on account of I belonged to the Foreman's Association.

Trial Examiner Feiler: What did he say?

The Witness: He said No, he didn't think it was.

Q. (By Mr. Citrin) Did the Union come up in your discussions with Mr. Erwood?

A. Not that I recall.

Q. Did the Union come up in your discussions with Mr. Walton?

A. It did not.

Q. Do you know if Mr. Farr was working on the same shift as you were?

A. Why, he used to come in about half-past ten in the morning, usually, and sometimes he would go away in the afternoon. I don't know what shift, whether he worked three shifts or one shift.

Q. Was he in the Trim Shop Department?

A. He was in the Trim Shop Department, yes.

Q. Did he ever give you any instructions?

A. Oh, yes, he did.

Q. Did you ever give him any instructions?

A. I did not.

Q. Did you consider that Mr. Farr had more authority than you did?

140 A. I did.

Q. Anyone ever tell you that?

A. Yes, Mr. Roberts told me when I went up there, he said, he told me Ed Farr was in charge and I would be next in charge to Mr. Farr. He told me that before the

Union business was ever discussed, when I first went up in the Paint Shop,—Trim Shop, pardon me.

Q. During the time you were in the Trim Shop Department, Harold Moss and John Spalding were working under you?

A. They were. They were both Assistant Foremen.

Q. Same shift as you?

A. Both the same shift.

Q. And Edward Farr you considered above you on the same shift?

A. I did.

Mr. Citrin: No further questions.

Trial Examiner Feiler: Any questions?

Mr. Konopka: No questions.

Mr. Meder: No questions.

Q. (By Trial Examiner Feiler) Let me ask you this: Can you describe your duties at the time of your lay-off? What was your job?

A. Well, we had the Cutting Room down there, and they cut out the cloth for the Soft Cab Job, General Motors Soft Cab Job, and they made the side-curtains, and they made all the safety belts for army trucks, and made gun
141 carrier pads; there was numerous articles. They brought some things up to the Press Shop for me to handle. There are too many to mention.

Q. What I would really like to know, I do not know anything about the work you do, how would the experience as a Trimmer enter into the work?

A. It wouldn't enter a damned bit, because they had an experienced Trimmer before I was there, and I was told the day I went up there, "You go up there and see what you can do with it. It is going in the hole. The man that had it before can't handle it." And he was a Trimmer, Jack Spalding. After that, he sat in the corner and my people used to tell me, if he came around there they would quit work, they wouldn't work as long as Jack Spalding was around. That is all he did, was sit in the corner.

Trial Examiner Feiler: I will not go further into this. I will just indicate to you gentlemen I am a little hazy how Trimming entered into the work of this job, and why an

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expert Trimmer might or might not be necessary in a Supervisory job here. I do not know any more than what appears in the testimony so far. If either of you gentlemen think it is relevant, you can develop it.

Anything further?

Mr. Citrin: No, I do not have anything further.

Mr. Meder: Nothing further.

142 Q. (By Mr. Citrin) Mr. Schieman, do you recall whether or not any production employees were laid off in the trim shop department in March or, well, February, March, or April of 1944?

A. No, I had to borrow people from other departments, because I didn't have enough.

Q. You did not have enough people in your department?

A. All the time I was there.

Q. Did you ever lay off any employees?

A. I did not.

Q. Was there ever a time when you had sufficient employees?

A. Yes, with the borrowed ones I did.

Q. With the borrowed ones you did?

A. Yes.

Q. Was there any cut back or cut down of orders that you know of that occurred?

A. No, it was boosted up. They boosted the curtains up, way up to 360 a day from the time I was there. They were only getting a few a day, and I started this curtain line. It was my own idea, and I started it until I had curtains piled all over the floor.

Q. So that as far as you know, the work did not fall off in March and April of 1944?

A. It didn't fall off while I was there.

Mr. Citrin: No further questions.

Cross-Examination.

143 Q. (By Mr. Meder) When did you first go into the Trim Department?

A. I don't know the exact month I was there, about fourteen or fifteen months, as far as I remember.

Q. Do you have any idea of what the pay roll was in Janary, 1944, in the Trim Department?

A. Sir, I do not.

Q. Would you say that the pay roll in the Trim Department, in which you were working, was greater or less in February of 1944 than in January of 1944?

A. In February.

Q. What is the answer?

A. I said February.

Q. It was less in February than January?

A. No, it was more in February.

Q. More in February, that is your answer, is it?

A. That is my answer.

Q. Would you say the pay roll in the Trim Department in March of 1944 was more or less than February, 1944?

A. You are getting too deep for me. I don't remember. All I know is by the people I had, and I had to borrow people because we never had enough. I don't know what the pay roll was at all.

Q. The pay roll in April, 1944, in the Trim Department was very considerably lower than the pay roll in January of 1944, or don't you know?

144 A. I don't know.

Mr. Meder: That is all.

Trial Examiner Feiler: Anything further, gentlemen?

Mr. Citrin: Nothing further.

Trial Examiner Feiler: Thank you, step down.

(Witness excused.)

Mr. Citrin: Will you stipulate, Mr. Meder, that the Foreman's Association of America, Chapter 77, is a Labor Organization within the meaning of the Act?

Mr. Meder: Yes, sir.

Mr. Citrin: Will you take the stand, Mr. Vallance?

WILLIAM VALLANCE,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Citrin) What is your name?

A. William Vallance.

Q. Where do you live, Mr. Vallance?

A. I live at 3325 Ellwood Avenue, Berkley, Michigan.

Q. What is your job, Mr. Vallance?

A. First Vice-president of the Foreman's Association of America.

Q. Now in that capacity, did you ever meet Oscar Owens?

A. I did.

145 Q. Do you know whether or not the Foreman's Association was attempting to organize a Chapter at the Budd Manufacturing Company?

A. We were not, Mr. Citrin. Mr. Owens solicited information from us concerning our Organization.

Q. I see Do you know whether or not a Chapter was organized at the Budd Manufacturing Company?

A. It was.

Q. Do you know whether or not any Officers were elected?

A. Yes.

Q. And who were the officers?

Mr. Meder: Now, if you please, I do not see where this line of questioning has got anything to do with this particular case. I do not doubt but what they have got a Chapter and got Officers and are trying to get members. It seems to me it is entirely irrelevant, immaterial and incompetent to the issues in this case.

Trial Examiner Feiler: I think it is material. Perhaps what the attorney has in mind is putting in some of the background organizational work.

Mr. Meder: There was not any, the witness said.

Trial Examiner Feiler: Well, whoever started it. The witness is testifying it was not an attempted organization

from without, so far as I understand. I suppose we can have a bit on this line as to what was actually
146 formed at the Company. I will allow it.

Q. (By Mr. Citrin) Do you know whether or not any Officers were elected?

A. There were, Mr. Citrin.

Q. Who were the Officers?

A. Mr. Owens was temporary President.

Mr. Meder: If you please, there has been no foundation laid for this witness testifying to that effect. So far as I know, it is pure hearsay; so far as you know, it is hearsay. I object to it. Just prolonging the hearing, that is all we are doing here.

Trial Examiner Feiler: Did you attend any of the meetings?

The Witness: Not the original meeting, but I did attend a meeting later on in the Barlum Tower.

Trial Examiner Feiler: Your testimony that Owens was President is based upon some report to you, is that right?

The Witness: That is correct. As an Officer of the Association, I have that information.

Mr. Meder: Renew the objection.

Trial Examiner Feiler: We already have it in, anyway. I think it is within the witness' field of knowledge to testify concerning it.

Q. (By Mr. Citrin) Will you go on and name the Officers, Mr. Vallance?

147 A. Will you repeat that?

Q. Will you name the Officers of the Chapter?

A. Yes. Mr. Owens, Mr. McNary, and Mr. Harrison.

Q. Now, do you know whether those men continued to hold offices in the Chapter?

A. Up until, I believe, it was the Sunday of April 2nd.

Q. Of what year?

A. '44.

Q. Now were you present at a meeting that was held at the Barlum Tower?

A. I was. I Chaired that meeting.

Q. At that meeting, did the Officers of the Chapter at Budd's come up?

A. Yes, each of those Officers approached me and told

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me the status of affairs in the Budd Manufacturing Company Plant in connection with Mr. Walton.

Mr. Meder: May it be understood this entire line of questions is taken subject to my objection?

Trial Examiner Feiler: This is based on the witness' actual conversation.

Mr. Meder: One of my objections was, that as far as issues are concerned in this case, it is in no way related to the issue, and certainly what may have happened up there is not binding on the Company.

Trial Examiner Feiler: Well, that objection will be
148 allowed as a continuing one. I am not sustaining it.

Mr. Meder: Without my continually interrupting?

Trial Examiner Feiler: That is right.

Mr. Citrin: Would you read the question?

(Question and answer read.)

The Witness: Shall I carry on?

Trial Examiner Feiler: Did you finish your answer?

The Witness: No, it is not complete.

Trial Examiner Feiler: All right, finish your answer.

A. (Continuing) And the Officers told me Mr. Walton had asked them to resign as Officers of the Chapter, and he did not want any Association or any Chapter in that Company Plant, and under the circumstances I agreed to run the affairs of the Chapter so that those Officers of the Chapter would not be incriminated in any shape or form.

Mr. Meder: Now I ask that that portion of the answer which has to do with what they told this man Mr. Walton said to them be stricken from the record as purely hearsay.

Mr. Citrin: Mr. Examiner, I think it is relevant.

Mr. Meder: What difference if it is relevant, it is hearsay.

Trial Examiner Feiler: Well, I will accept it on the basis, not for the truth of the statements made, but as an explanation of the action taken at the meeting.

Mr. Meder: Certainly the action taken at the meet-
149 ing is not binding on the Company.

Trial Examiner Feiler: I do not say it is, but I say as far as the testimony has gone so far.

Q. (By Mr. Citrin) Now, did Harrison, McNary and

Owens continue to hold offices after that meeting at the Barlum Tower?

A. No, Mr. Citrin.

Q. What occurred at that meeting?

A. At that meeting I put it to the members—

Mr. Meder: (Interposing) May it be understood that my last objection stands to all this line of questions?

Trial Examiner Feiler: Yes.

A. (Continuing) In a democratic organization, those facts must be brought before the membership of any Chapter. Because of that fact, I put it before them, and they agreed that under the circumstances the books that were held by the Chapter would be turned over to me and I would take care of the moneys, etcetera.

Q. (By Mr. Citrin) What happened to the Officers?

A. The Officers resigned.

Q. At this meeting?

A. At that meeting, at that particular meeting.

Q. Now, at this meeting that was held, were there any other members present at that meeting besides yourself and Owens and Harrison and McNary?

A. Yes, if I remember right, there was somewhere
150 around twelve or fourteen members present.

Q. Now does the Foreman's Association of America have a Constitution?

A. They have.

Mr. Citrin: Mark this Board's Exhibit 6, and this Board's Exhibit 7.

(Whereupon the documents above referred to were marked Board's Exhibits 6 and 7 for identification.)

Q. (By Mr. Citrin) I will show you Board's Exhibit marked 6 for identification, and ask you what that is?

A. That is the Constitution of the Foreman's Association of America, as amended at the 1943 Convention, and was in effect at the time that this happening occurred by this Chapter.

Q. Was that Constitution in effect in April, 1944?

A. That is correct, Mr. Citrin.

Q. Now I show you Board's Exhibit marked 7 for identification, and ask you what that is?

A. That is the Constitution of the Foreman's Associa-

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tion of America as adopted at the 1944 Convention and presently in effect.

Q. When was the 1944 Convention held?

A. In September, 1944.

Mr. Citrin: I offer these documents in evidence.

Trial Examiner Feiler: Any objection?

Mr. Meder: No objection.

151 Trial Examiner Feiler: There being no objection, they are admitted in evidence.

(Whereupon, the documents heretofore marked Board's Exhibits 6 and 7 for identification were received in evidence.)

Mr. Citrin: No further questions.

Trial Examiner Feiler: Any questions?

Mr. Konopka: No.

Trial Examiner Feiler: Mr. Meder?

Cross-Examination.

Q. (By Mr. Meder) Have you with you the Constitution of the Foreman's Association of America prior to the one of the 1943 Convention?

A. No, I haven't.

Q. Can you bring it in tomorrow morning, a copy of it, please?

A. Do you wish the original?

Q. No. You have a printed copy, do you not?

Trial Examiner Feiler: Is there a printed copy of the Constitution that was in effect before this copy, Board's Exhibit 6?

The Witness: Yes, we had two prior to that. The original was in 1941.

Mr. Meder: The one that is just prior to the 1943 Convention, that is in printed form. Will you bring a printed copy of it, in fact, will you bring three copies of that in?

The Witness: I will try to. Those are out of date,

152 you understand.

Trial Examiner Feiler: Off the record.

(Discussion off the record.)

Trial Examiner Feiler: On the record.

Mr. Meder: That is all.

Trial Examiner Feiler: You have no further questions of the witness at this time?

Mr. Meder: No, not until he brings them in.

Trial Examiner Feiler: Will you bring them in tomorrow morning?

The Witness: Yes.

(Witness temporarily excused.)

Trial Examiner Feiler: Off the record.

(Discussion off the record.)

Trial Examiner Feiler: On the record.

Adjourned to nine o'clock tomorrow morning.

(Whereupon, at four-thirty o'clock p. m., Tuesday, May 22, 1945, the hearing was adjourned until tomorrow, Wednesday, May 23, 1945, at nine o'clock a. m.)

152c

1332 National Bank Building,
Detroit, Michigan,
Wednesday, May 23, 1945.

Pursuant to adjournment, the above-entitled matter came on for hearing at 9:00 o'clock, a. m.

Before:

Sidney L. Feiler, Esq., Trial Examiner.

Appearances:

Beaumont, Smith & Harris, by Albert E. Meder, Esq., 11th Floor, Ford Building, Detroit, Michigan, appearing on behalf of Respondent.

David Citrin, Esq., 1332 National Bank Building, Detroit, Michigan, appearing on behalf of the National Labor Relations Board.

Walter M. Nelson, Esq., by Bernard E. Konopka, Esq., 1438 Dime Building, Detroit, Michigan, appearing on behalf of the Union, and Mr. William Vallance (1st Vice-President), 515 Barlum Tower, Detroit, Michigan.

154 PROCEEDINGS.

Trial Examiner Feiler: The hearing is in order.

ROBERT ERWOOD,

an adverse witness called by and on behalf of the Board, resumed the stand, was examined and testified further as follows:

Redirect Examination.

Q. (By Mr. Citrin) Mr. Erwood, you were requested by a subpoena to furnish National Labor Relations Board a list of all the Supervisory employees in the Trim Shop Department during the months of March, April and May, 1944. Now, did you search your records in an effort to determine who these Supervisory employees in that department were during those months?

A. I did.

Q. Now, who were the Supervisory employees during those months; you gave the names of Edward Farr—

Mr. Meder: (Interposing) If you please, I object. It has all been testified to. What is the use of repeating all this? We just sit here and repeat and repeat and repeat. He is after definite information. One question will bring the answer.

Trial Examiner Feiler: I think we are losing time.

Mr. Citrin: Harold Moss, John Spalding, and Fred Schieman. Now, in addition to those names, were there

155 any other employees in the Trim Shop who were termed Supervisory employees during the months of March, April and May, 1944?

The Witness: No.

Q. (By Mr. Citrin) Now, would the Leader be classified, would you term a Leader as a Supervisory employee?

A. Not in the sense of being considered a Foreman. They have no authority to discharge people, recommend increases either in rates or personnel. They are merely people who assist production workers in their work. They are workers, not Supervisors.

Q. Yesterday, the name of William Cadieux was men-

tioned as a Supervisory employee. Now, why was his name brought out, Mr. Erwood?

A. Because he became a Supervisor in November of 1944.

Q. Now, prior to that time, prior to the time he became a Supervisor, do you know what his duties were?

A. Yes.

Q. What were they?

A. May I read off the clock cards? He was a Leader and a worker during all the period from the last of March up to and including the time he became a Foreman in November.

Q. Now do you know when he first became a Leader?

A. I don't know when he first became a Leader. His first clock card is for the last few days in March, and ending on the 5th of April; and I can show you the
156 clock cards from then on out, up until November.

Q. Then the week ending in April, would that be—

A. (Interposing) The pay period ending the 5th of April, but it goes back seven days into the last couple of days in March.

Q. At that time he was a Leader?

A. At that time he was Assembly Leader.

Q. In the Trim Shop Department?

A. Department No. 12.

Q. In reading over the personnel card of William Cadieux yesterday, you mentioned that on July, it was mentioned on July 7, 1942, William Cadieux was a Cutter in Department 12. Now, would you say he was a Stock Cutter until the last week in March when he became a Leader?

A. Not necessarily, no. I can explain by saying with our people it is the practice and policy of the Company to move people from one job within a department, and he could have been in that period in 1942, up until 1944, could have come back from Stock Cutter to Assembler to the Sewing Room or any other operations within the Trim Department.

Q. Could he have been a Leader without it being shown on his personnel employment card?

A. Oh, yes.

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Q. Well, it is said he became a Leader in a department. Would his Foreman know about it?

157 A. They couldn't very well be a Leader without the Foreman knowing about it, if his Foreman was on the job.

Mr. Citrin: No further questions.

Trial Examiner Feiler: Any further questions?

Mr. Meder: No.

Mr. Konopka: Not at this time.

Mr. Citrin: Mr. Vincent Dupuye.

VINCENT DUPUYE,

a witness called by and on behalf of the Board, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Citrin) What is your name?

A. Vincent Dupuye.

Q. Where do you live?

A. 155 Florence, Highland Park.

Q. Where are you employed?

A. Edward G. Budd Manufacturing Company.

Q. When were you first employed by the Edward G. Budd Manufacturing Company?

A. September 9, 1940.

Q. Now, are you still employed at the Edward G. Budd Manufacturing Company?

A. Yes.

Q. In what capacity?

A. Foreman, at the present time.

158 Q. You are Foreman at the present time. Now, were you a Supervisory employee at the Edward G. Budd Manufacturing Company during 1944?

A. Parts of the year.

Q. Do you recall whether or not you were ever questioned by Management, concerning the Foreman's Association of America?

A. Yes, we were.

Q. Now, do you recall when that was?

A. I don't know, it was a week or two after we had a

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meeting out at Owens' home on a Sunday; and shortly after that, we were called down in the office.

Q. You were called into the office, is that it?

A. We were called down in the Superintendent's office, where they have their individual offices. They have a little room in there.

Q. Who was present at that office?

A. Well, there was Mr. Erwood, Mr. Walton, and Vic Gilbert, and, I believe, Vern Schoebelein.

Trial Examiner Feiler: Spell that name for us.

The Witness: S-c-h-o-e-b-e-l-e-i-n.

Trial Examiner Feiler: What is his job at the plant?

The Witness: General Foreman.

Q. (By Mr. Citrin) Were there any employees present there, any other employees present?

A. There was Al Cadotte and Joseph Pelath.

Q. Who are they?

159 A. Two other Foremen working with me.

Q. You were a Supervisory employee?

A. Yes.

Q. What was said at that meeting?

Trial Examiner Feiler: And who said it.

The Witness: I think—I don't remember whether it was Montee or Erwood—asked what we thought the Foreman's Union could do that they couldn't do, and we went into a discussion. I told them that I had been a Supervisory employee at different times and when I was taken off, they always told me I did a good job. Mr. Erwood said, "We aren't going to have any Foreman's Union. Before we have a Foreman's Union, we will shut the plant down," or words to that effect, and he didn't much more than get through with that until Walton said, "Well, we aren't going to worry about the Foreman's Union. We just aren't going to have any." And some of the other fellows started talking. I don't remember, we done quite a lot of talking at that meeting.

Q. Were you asked whether or not you were a member of the Foreman's Union?

A. No, I wasn't.

Q. Were any of the other employees asked? Do you know?

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A. At the time I was down there, I don't believe so, no.

Q. Do you know Oscar Owens?

A. Yes.

Q. Do you know if anything occurred at the plant following the termination of employment of Oscar Owens?

160

A. I heard he was called down to the office on, I believe, two occasions that I know of, and finally he was fired.

Q. Well, now, after Owens no longer worked at the plant, did anything occur, was any action taken by the Supervisory employees?

A. Practically all of the Foremen on the day shift went out to the office one morning, and we were told we were to go to the employment office, that Mr. Erwood and Mr. Walton wouldn't be in, so we decided to wait.

In just a few minutes, they came out, and I believe one of the spokesmen asked Walton—or I believe it was Mr. Erwood—they asked us what we wanted. We told them we would like to see Oscar get back to work, and he said that was out, that they weren't going to have him back.

Trial Examiner Feiler: Erwood said that?

The Witness: Yes.

Q. (By Mr. Citrin) Was anything said as to why Owens wasn't working there?

A. We asked him why he was let out, and—

Mr. Meder: (Interposing) Who is "We", do you know Mr. Dupuye?

Trial Examiner Feiler: I guess you refer to the spokesman for the Foremen, who was doing the talking, when you say "We".

The Witness: What do you mean?

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Trial Examiner Feiler: You said, "We asked".

The Witness: The spokesmen, as a group, we were there in a body.

Trial Examiner Feiler: Do you remember who did the talking?

The Witness: I believe Al Stanovich did most of the talking.

Trial Examiner Feiler: Go ahead.

The Witness: Where was I?

Trial Examiner Feiler: Up to the point where somebody asked why Owens was let out. Who gave you a reason for it, if any?

The Witness: There was different ones talking. Erwood and Walton, I don't remember just who it was. I believe something was said about Oscar being fired for Union activities, and Walton said he wasn't, that he was fired for being a God damned liar. He said that he told him he would get out of it, and he didn't do it, and he fired him for being a liar.

Q. (By Mr. Citrin) When he told him he would get out of it, what was meant by that?

Mr. Meder: I object.

The Witness: I don't know.

Trial Examiner Feiler: Just a minute. Read the question.

(Question read.)

Mr. Meder: He answered. He said he didn't know.

162 Trial Examiner Feiler: Do you withdraw the objection?

Mr. Meder: I will withdraw the objection.

Q. (By Mr. Citrin) Walton said Owens was fired because he was a liar?

A. He used a little stronger terms.

Q. What were his words?

A. He said he was fired because he was a God damned liar, he told him he would get out, and he didn't. I believe it was Stanovich asked him why he didn't put that on the slip when he laid him off. I believe Bob said he would put on the slip what he wanted to put on.

Q. By "Bob" to whom are you referring?

A. Mr. Erwood.

Q. Following this demonstration, did any change occur in your status with the Company?

A. I had been put back, transferred to Inspection about a day or two previous to that, but my slip was dated on the date of that day, and I went out to the office with the fellows before I transferred back to Inspection.

Q. You were a Supervisory employee, and you were put back on Inspection?

A. I already had the transfer slip, but I hadn't gone back to the Inspection Department yet at that time.

Q. I see. Well, now, this time that you were put back on Inspection, was this following the termination of

163 employment of Oscar Owens?

A. That was after, yes.

Q. That was after, and during the time that you were working for the Edward G. Budd Manufacturing Company, did your work ever bring you in contact with Oscar Owens?

A. Yes.

Q. In what way?

A. When I first went to work in Budd's, I was inspecting doors on the first floor; and Oscar Owens had charge of that job, and a few days at one time, I was inspecting on the line, while he was Foreman over there.

Q. This Inspection that you went back to, in your opinion could Oscar Owens do that work?

A. Yes, he could. He was Inspector before I went there.

Q. You know that of your own knowledge?

A. All I know is what I heard. You know various Foremen and they say he came from the Inspection Department. He was a Foreman when I went to Budd's.

Mr. Citrin: No further questions.

Cross-Examination.

Q. (By Mr. Meder) You say you went to work September 9, 1940?

A. That is right.

Q. On what job?

A. I hired in as a Metal Finisher, but was put on Inspection.

164 Q. You continued until when?

A. To the end of the model, I imagine around June. I don't know.

Q. Of the next year, '41, is that right?

A. That is right.

Q. And then you were out for a period of two or three weeks, were you?

A. Two or three weeks, yes.

Q. Then came back on the same job?

A. No, an Inspector on the third shift.

Q. You stayed there until January of 1942, did you not?

A. Yes.

Q. Then you were made a Foreman?

A. That is right.

Q. And you continued as a Foreman for perhaps three months?

A. Somewhere around in there.

Q. Then you became a Welding Inspector?

A. I was a Welding Inspector before that, yes, that is right.

Q. After you were Foreman, when you were demoted because of reduction in force, you became a Welding Inspector?

A. That is right.

Q. And you continued as a Welding Inspector until the middle of that summer of 1942, is that correct? When you became a Foreman, I believe, is that right?

A. That is right.

165 Q. You continued as a Foreman for about four months, did you, until sometime in October, 1942?

A. I don't remember that.

Q. Then because of a reduction in force, you were demoted, were you not?

A. Put back to Inspecting, yes.

Q. And that was Welding Inspecting, was it?

A. I believe it was.

Q. And you continued at Welding Inspection until the summer of 1943, when you were again made Foreman?

A. That is right.

Q. And you continued as a Foreman until the spring of 1944, is that right?

A. That is right.

Q. Then you went back to Inspection, due to reducing the force?

A. That is right.

Q. And you continued as an Inspector until you were made an hourly rate Foreman, is that correct?

A. That is right.

Q. When was that?

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A. I believe it was somewhere around last September.
Q. Of 1944?
A. Yes.
Q. And in February of this year, you were made a
166 salaried Foreman, is that correct?
A. That is right.
Q. You are a salaried Foreman now?
A. Oh, yes.
Q. Are you a member of the FAA?
Mr. Citrin: I object.
Trial Examiner Feiler: Sustained, on the last question.
Q. (By Mr. Meder) Are you still working at the plant?
A. Yes.
Q. You are still a Foreman?
A. Yes.

Redirect Examination.

Q. (By Mr. Citrin) Were you subpoenaed to appear here this morning?
A. Yes.
Mr. Citrin: No further questions.
Mr. Konopka: No questions.
Trial Examiner Feiler: The witness is excused.
(Witness excused.)

WILLIAM VALLANCE,

resumed the stand, was examined and testified further as follows:

Recross-Examination.

Q. (By Mr. Meder) Did you bring with you this morning, the Constitution of the Foreman's Association of America which was in effect prior to the 1943 Convention?
167 A. The facts of these obsolete Constitutions, I will leave in the hands of the Examiner.
Trial Examiner Feiler: In other words, you did not bring them?
The Witness: I did bring them.
Mr. Meder: May I have them, please?

Trial Examiner Feiler: Off the record.

(Discussion off the record.)

Trial Examiner Feiler: On the record.

Q. (By Mr. Meder) The one you just handed me is dated November 2, 1941.

A. That is the original Constitution.

Q. That is the original?

A. Yes.

Q. Thank you, sir. Do you think that the FAA is short on the number of these, these printed copies of the Constitutions adopted at Dearborn, Michigan, in December, 1941? I will not ask to have the Constitution put in evidence, but I do want to call attention to the fact that Article 5, entitled, "Membership," in Section 2 in the Constitution adopted at Dearborn, Michigan in 1942, reads in part: "Any person of good moral character who is a Foreman, or whose duties require the supervision of other employees, at the time of filing his application for membership, may become a member of this Association; provided he has been a Foreman not less than thirty days
168 prior to filing his application for membership, and providing his application to a Chapter of this Association is accompanied by initiation and membership fee."

Trial Examiner Feiler: Any further questions of this witness?

Mr. Citrin: Yes.

Redirect Examination.

Q. (By Mr. Citrin) Mr. Vallance, the Association which is involved in this case is the same Association that was involved in the Packard case?

A. That is correct, sir.

Mr. Citrin: No further questions.

Mr. Konopka: No questions.

Trial Examiner Feiler: You are excused.

(Witness excused.)

Trial Examiner Feiler: Off the record.

(Discussion off the record.)

Trial Examiner Feiler: On the record.

Mr. Citrin: Mr. Schmidt.

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RICHARD L. SCHMIDT,

a witness called by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Citrin) Your name?

A. Richard L. Schmidt.

169 Q. Where do you live?

A. 19989 Washtenaw, Detroit, Michigan.

Q. What is your present position, Mr. Schmidt?

A. I am President of Local 306, UAW-CIO.

Q. What Companies do you come in contact with?

A. The Local Union representing the employees of all the Budd Companies in Detroit, Michigan.

Q. That includes the Edward G. Budd Manufacturing Company?

A. Yes.

Q. Now, prior to the time you became President of Local 306, what was your job?

A. I was a Welder in the shop, and since the Local was organized, I have been on the Executive Shop Committee for some four terms.

Q. In what shop were you working?

A. The Manufacturing Company.

Q. The Edward G. Budd Manufacturing Company?

A. That is right.

Q. How long, approximately, did you work for the Edward G. Budd Manufacturing Company?

A. I worked without any break in seniority in the service of the Company since June 6, 1933.

Trial Examiner Feiler: And you are still working there?

The Witness: I am on a leave of absence from the shop while I am a Local Officer. May I make a correc-

170 tion? June 7, 1933.

Q. (By Mr. Citrin) Do you know Oscar Owens, Mr. Schmidt?

A. Yes.

Q. In your capacity as President of Local 306, did you ever come in contact with Oscar Owens?

A. Yes.

Q. Do you recall when that was?

A. Well, it was in the early part of 1944.

Q. The spring of 1944? How did you happen to come in contact with Oscar Owens?

A. He came to the Local Union and told me that he had been let out by the Management there, and asked my advice as to what could be done about reinstatement.

Q. And did he explain the circumstances of the case to you?

A. Yes.

Q. What was it he said to you, in substance?

A. He told me that the Company had laid him off, that they were reducing the force, and that they had refused to allow him to revert back to his former capacity as a production employee, which was a general practice; and he felt that his discharge by the Company was because of Union activities that he was doing at that time in the Foreman's Association.

Q. Do you know the general practice of the Edward G. Budd Company relative to letting out of their Supervisory employees?

A. From my own information, from the experience
171 I have had as a Committeeman and Chairman of the Local Union, in the Manufacturing Company, I know of no other case where an employee who has been promoted from production to Supervision was not allowed to revert back to production when he was no longer needed as a Supervisory employee. This is the first case I know of in my experience, that we have had that occasion happen.

Q. I want you to pay attention to your answers. I think perhaps you made a mistake. Will you read his answer, please?

(Answer read.)

Q. (By Mr. Citrin) Following your talk with Mr. Owens, did you do anything?

A. Well, the case as he presented it to me, was more or less technical as far as our particular contract was concerned; and I thought that the best thing to do would be to contact Management, and ask just what position

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they were taking, and why they were taking that position, if Owens' statements to me was right.

Q. Did you contact Management?

A. Yes, I called Al Walton the next morning, the Foreman of the Manufacturing Company, and asked him to tell me what it was all about, and what he wanted to do.

Q. What did he say to you?

A. He told me that the action had been taken by the Management, that Management would do as they pleased in a particular case; that the Local Union would not
172 be consulted on the case, and he advised me not to take up Oscar's case, because there was no chance of doing anything about it; they had made a decision. On that answer, I gave no decision as to whether the Local Union would act. I thanked him for the information, and that was the end of our discussion, with the exception that he further said that if Oscar himself wanted to further take up his case and had anything else to offer in defense of his position, he could come in and talk for himself.

Q. Now, did your Local take any action in this case?

A. No.

Q. Why not?

Mr. Meder: If you please, I do not think this is relevant to this issue, what action they took.

Trial Examiner Feiler: I will allow it. I do not see that it is binding.

The Witness: We didn't take action in this particular case because after the discussion with Oscar and checking into the various stories and facts connected with the case, by agreement with Oscar, we decided, rather, he decided, that he would rather take his case to the NLRB.

Q. (By Mr. Citrin) Now, as President of Local 306, representing the Production Workers of the Edward G. Budd Manufacturing Company, had Oscar Owens not elected to follow the procedure laid down by the National Labor Relations Board, would any action have been taken by your Local?

173 Mr. Meder: I object. It is irrelevant to this issue. And it is entirely speculative.

Trial Examiner Feiler: I think it is speculative.

Mr. Meder: Purely speculative.

Trial Examiner Feiler: Particularly in view of the agreed statements as to the Company's action in this case.

Mr. Citrin: All right, I will withdraw the question. No further questions.

Mr. Konopka: No questions.

Mr. Citrin: Mr. Schmidt, were you subpoenaed to appear here?

The Witness: Yes, I was subpoenaed.

Mr. Citrin: Did you call the Edward G. Budd Manufacturing Company? Why did you call them?

The Witness: I felt that because of the facts, the way Oscar gave them to me, I thought there was a mistake being made, if Oscar gave me the straight story and circumstances as he gave them to me. I thought I would check with Management first and verify the facts as given.

Mr. Meder: I just want to say on the record, I am not objecting, although I think I should. I do not want anybody who reads this record to think that I do not appreciate this is wholly irrelevant. I am not objecting, because it does not hurt us any.

Mr. Citrin: Did you call the Edward G. Budd Manu-
174 facturing Company because Oscar Owens was a Supervisory employee?

The Witness: No, I called it on the basis that he was a member of the Local Union before he went into Supervision, and the fact he was through as a Supervisor, he should have been referred back, under our contract, when we were in position to check into it.

Mr. Citrin: As a production worker?

The Witness: That is right.

Trial Examiner Feiler: Witness excused.

(Witness excused.)

ERNEST McNARY,

a witness called by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Citrin) Your name?

A. Ernest G. McNary.

Q. Where do you live?

A. 9205 Brady.

Q. Where are you employed?

A. Edward G. Budd Manufacturing Company.

Q. What is your position with the Edward G. Budd Manufacturing Company?

A. General Foreman.

Q. When were you first employed by the Company

A. Well, I don't know exactly what date it was. In the latter part of 1927.

175 Trial Examiner Feiler: 1927?

The Witness: Yes.

Q. (By Mr. Citrin) Have you been, since that time, have you been more or less continuously employed with the Company?

A. Except about three months one time, I think it was around three months.

Q. Do you recall when it was that you became Supervisory employee?

A. At first, it was off and on as business—if they had business we were put on as Foremen—as business dropped off, they would take us off, but the last—I would say, ten years—the last ten years I have been on steady.

Q. As a Foreman?

A. Not a General Foreman. The last seven or eight years as a General Foreman.

Q. The last seven or eight years you are a General Foreman? What is meant by General Foreman?

A. General Foreman's capacity is to have the running of the job.

Trial Examiner Feiler: By General Foreman, do you mean salaried Foreman?

The Witness: Yes. He has Foremen working under him.

Q. (By Mr. Citrin) You had Foremen working under you?

A. Yes.

Q. Did you ever hear of the Foreman's Association of America?

176 A. Yes, I have.

Q. Were you ever questioned by Management relative to the Foreman's Association of America?

A. Yes, I was called out to the front office on three different occasions.

Q. When was that? Do you recall?

A. I don't recall the dates. We had a meeting one time at Oscar Owens' house, and a bunch of us talked about this Foreman's Association. It was only a few days later that the three of us was called up in the front office, and we were told there wouldn't be no Union.

Q. You were told there wouldn't be a Union. Who was present at that meeting?

A. If I recall rightly, I think it was Mr. Walton and Mr. Erwood and Mr. Hanafin and Mr. Montee.

Q. At the time that you were an Officer of the Union, is that correct?

A. At this meeting, I was nominated for temporary Vice-president.

Q. This meeting? What meeting are you referring to now?

A. This was the meeting we had at Oscar Owens' home.

Q. That was about March, 1944? Would that be correct?

A. I would say that would be about it.

Q. And it was following that meeting at Oscar Owens' home, that you were called into the office of Management?

177 A. Just a short time after.

Q. Now, what occurred at that meeting?

A. Well, we were questioned about what Mr. Keyes could do for us that the Company couldn't and told there wouldn't be no Union.

Q. Did any question come up relative to the Officers of the Union?

A. I don't know, in particular, at that meeting.

Q. Was there a subsequent meeting that was held?

A. Yes.

Q. Subsequent meeting. Did any question come up relative to the Officers?

A. We were called out a short time after, just a few days later.

Q. By "We" whom do you mean?

A. Oscar Owens, Louis Harrison and myself.

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Q. Did the question of the Officers of the Union come up?

A. Yes, we were asked to resign our positions, but we didn't feel that we should; and then we were going to be laid off, but we didn't get laid off, and then we were told to get out and stay out.

Q. Did there come a time when you no longer acted as Officer of the Union, when you no longer acted as an Officer of it?

A. They told us to get out and we got out.

Q. You resigned your offices, is that right?

178 A. That is right.

Q. Do you know whether or not Mr. Harrison resigned his office?

A. Yes, I was there when he resigned. We all three resigned at the same time.

Q. Do you know whether or not the other Supervisory employees at the Company were questioned by Management about the Union?

A. Yes, I think all the Foremen were called in, three of us at a time, in groups of three; a date a little later than this, I would say a week or so later, and all told to get out and stay out.

Mr. Meder: I object. It is purely hearsay.

Trial Examiner Feiler: Sustained.

Mr. Meder: I move that it be stricken.

Trial Examiner Feiler: Granted.

Q. (By Mr. Citrin) Was it common knowledge in the plant that all the Foremen were called into the office and questioned about the Union?

A. I don't understand the question.

Trial Examiner Feiler: Well, the Company admits it, Mr. Citrin, so why go any further; unless you have something else in mind.

Mr. Citrin: They don't admit questioning them as to whether or not they were members of the Union, and telling them to get out.

179 Trial Examiner Feiler: I am sorry. Go ahead.

Q. (By Mr. Citrin) Was it common knowledge in the plant that all of the Foremen had been questioned about the Foreman's Association of America?

A. Oh, yes.

Q. Did you talk to any of the Supervisory employees after they had their interview with Erwood and Walton and the rest of the Management?

A. Oh, it was generally discussed, as far as I know, everybody was asked the same question or told the same thing, to get out.

Mr. Meder: I move that that be stricken.

Trial Examiner Feiler: Sustained. Please proceed.

Mr. Citrin: I don't see any objection to the answer. It was common knowledge among the group.

Trial Examiner Feiler: It seems to me you cannot prove anything in this instance by this type of hearsay. It seems that a large group of Foremen were called in and certain statements made to them. Now, if you want to prove that, why not have one or two of those Foremen come in and testify?

Mr. Citrin: All right.

Q. (By Mr. Citrin) Following the termination of employment of Oscar Owens, did anything occur at the plant?

A. A group of us went into the front office one morning to see why he got fired. We were never really told why.

Q. Who was present at that meeting?

180 A. Mr. Walton, Mr. Erwood, and Mr. Hanafin.

Q. Did anyone ask as to why Owens had been fired?

A. Yes, I think Al Stanovich did most of the talking that day, and he asked why he was fired.

Q. I see. Was any answer given?

A. Yes, Mr. Walton said the reason he was fired was because he was a God damned liar. That is the only answer we got out of him.

Q. During the time that you were questioned about the Union by Erwood and Walton and some of the other members of Management, was anything further said as to the Union organization?

A. Not that I recall.

Q. You say at this Foreman's demonstration, that Stanovich was doing most of the talking?

A. Yes.

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Q. Did anything occur, were any remarks directed, at that meeting, toward Mr. Stanovich?

A. He was threatened to be fired.

Q. By whom?

A. I believe it was Mr. Erwood.

Q. Mr. Erwood threatened to fire Mr. Stanovich?

A. Yes.

Q. Were you subpoenaed to appear here as a witness?

A. Yes.

Mr. Citrin: No further questions.

181 Mr. Konopka: No questions.

Mr. Meder: No questions.

Trial Examiner Feiler: You are excused.

(Witness excused.)

EDWARD BIMBERG,

a witness called by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Citrin) Your name?

A. Edward Bimberg.

Q. Where do you live?

A. 356 West Pearl Street, Hazel Park.

Q. Are you employed at the Edward G. Budd Manufacturing Company?

A. Yes.

Q. What is your present position?

A. Arc Welder.

Q. When were you first employed by the Company?

A. December 28, 1936.

Q. Now, during the period of your employment with the Company, were you ever a Supervisory employee?

A. Several times.

Q. During the period that you were a Supervisory employee, were you ever questioned by Management relative to the Foreman's Association of America?

182 A. Yes.

Q. Do you recall when that was?

A. No, I don't. I think it was in the spring.

Q. Spring of what year?

A. 1944, last year.

Q. Do you recall whether or not that was before the termination of employment of Oscar Owens, or after?

A. I believe that was before.

Q. Before Owens was discharged?

A. I am not sure.

Q. You were called into the office?

A. Yes.

Q. And who was present at that time?

A. Mr. Walton, Mr. Erwood, Mr. Roberts, and Mr. Richards.

Q. Mr. Richards? Who is Mr. Richards?

A. He has something to do with the Press Room.

Trial Examiner Feiler: Talk up loud, please.

The Witness: I don't know exactly what he does, something to do with the Press Room.

Mr. Erwood: He is Superintendent.

Trial Examiner Feiler: Was that true in April, 1944?

Mr. Erwood: Yes.

The Witness: I forgot Mr. Montee.

Q. (By Mr. Citrin) Were there any Supervisory employees present besides yourself?

183 A. Yes.

Trial Examiner Feiler: They were Foremen?

The Witness: Yes.

Q. (By Mr. Citrin) Now, what was said at that meeting?

A. Mr. Walton said he had just come back from Philadelphia and Mr. Budd would not stand for the Foreman's Association, and he asked us what the Foreman's Association would give us that they couldn't give us, and wanted us to talk and and we didn't say anything.

Trial Examiner Feiler: What was that?

The Witness: He wanted, he asked each of us about the Foreman's Association, and to give reasons why we belonged to it and joined up with it, and I told him I joined for job security.

Q. (By Mr. Citrin) Were you questioned as to whether or not you were a member of the Union?

A. No.

Q. Was anything said to you with respect to the Union? Remaining in the Union?

A. To get out, or else.

Q. You were told to get out or else?

A. Yes.

Trial Examiner Feiler: Who said that to you?

The Witness: I believe it was Mr. Walton.

184 Q. (By Mr. Citrin) Now, following the termination of Oscar Owens' employment, did Supervisory employees take any action?

A. Yes.

Q. And what did that action consist of?

A. They went down to see Mr. Walton and Mr. Erwood, and I don't know exactly how it was, but they didn't show up, and in a few minutes they walked in after we were all in the meeting.

Q. That is, Mr. Walton and Mr. Erwood came in?

A. Yes.

Q. Did anyone ask them any questions as to why Owens had been discharged?

A. Al Stanovich did most of the talking there, and Mr. Walton, I believe it was, said he was fired because he was a liar.

Q. He said Owens had been fired because he was a liar?

A. He used the words, "God damned liar".

Q. You say Stanovich was doing most of the talking?

A. Yes.

Q. Were any remarks directed to Mr. Stanovich by Mr. Erwood or Mr. Walton?

A. Yes, Mr. Erwood threatened to fire him, but afterwards he told him to go back to work. Mr. Stanovich told him that he wanted on the firing slip the reason why he was fired, and Mr. Erwood told him he would put what he felt like on there, or words to that effect.

Trial Examiner Feiler: On whose discharge slip?

The Witness: Al Stanovich's.

185 Q. (By Mr. Citrin) Do you know approximately how many supervisory employees there were in the Company in April, 1944?

A. No, I don't. I know I went to one meeting and the whole employment office was filled, all the benches.

Q. That was at this demonstration after Owens had been discharged?

A. Yes.

Q. Did any change occur in your employment status in April, 1944?

A. Yes, I was put back in production.

Q. Put back in production? Were you subpoenaed to appear here as a witness?

A. Yes, I was.

Mr. Citrin: No further questions.

Mr. Konopka: No questions.

Cross-Examination.

Q. (By Mr. Meder) What is this demonstration that the Board's attorney is talking about? What did you do? Picket?

A. No, just went in a body to ask to have Owens reinstated.

Q. You don't call that a demonstration, do you?

A. I don't see what else it would be.

Q. You went in to find out why he was laid off, you talked, and then went back to work?

A. No.

186 Q. The rest of them did, didn't they?

A. Yes.

Q. How long were you down there?

A. About an hour, I imagine.

Trial Examiner Feiler: Is that all? The witness is excused.

(Witness excused.)

Trial Examiner Feiler: Off the record.

(Discussion off the record.)

Trial Examiner Feiler: On the record.

Mr. Citrin: As the result of an off-the-record discussion, it has been stipulated by and between the parties that if Alexander Stanovich was called as a witness and permitted to testify, he would testify to the following facts: That following the termination of employment of Oscar Owens, a group of foremen went into the employment office for the purpose of determining the reasons or the reason for the termination of employment of Oscar Owens;

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that present on behalf of the Management were Robert Erwood, and Al Walton; that Mr. Stanovich asked why the employment of Oscar Owens had been terminated and Mr. Walton replied that Owens was fired because he was a God damned liar; that following the statement by Mr. Walton, Mr. Stanovich interrupted and said that he knew, that he had known Owens for a number of years, and that Mr. Erwood then interrupted Mr. Stanovich and
187 Mr. Stanovich said to Mr. Erwood, "Why don't you wait until I am through?" and Mr. Erwood said, "As far as I am concerned, you are through right now."

Mr. Meder: Let's go ahead. You represent the Government. Now give the rest of what you testified to. Put that right on the record, too.

Mr. Citrin: What is going on the record?

Mr. Meder: What I just said. What else did you testify?

Trial Examiner Feiler: What else do you want?

Mr. Meder: That he was not discharged but immediately went back to work.

Trial Examiner Feiler: All right. Is it so stipulated?

Mr. Citrin: Yes.

Mr. Konopka: Yes.

Mr. Meder: So far as the Company is concerned we will stipulate that he might so testify, but we will not admit that his testimony would be truthful, if he did so testify.

Mr. Citrin: The Board rests.

Mr. Konopka: I would like to ask Mr. Owens one question.

OSCAR OWENS

resumed the stand, was examined and testified as follows:

Cross-Examination.

Q. (By Mr. Konopka) Mr. Owens, at one of the meetings that you had with Management, I believe Mr. Walton was present, and Mr. Erwood. Were there any de-
188 rogatory remarks made about you or any of the other officers and your membership in the FAA?

A. There was.

Q. What were those remarks, and by whom were they made?

A. Mr. Walton said—Mr. Erwood sat on that side, I was in the middle, Ernie McNary was to this side, and Louis Harrison on the left side of me—Walton looked me right in the eye and said, "Do you know what I think you fellows are?" I said, "No."

He said, "I think you are a bunch of pricks." And then I never said a word back to him.

Q. Did he express disapproval of the Union at the same time?

Mr. Meder: That calls for a conclusion. I object to the question.

Trial Examiner Feiler: What did he say about the Union, if anything?

The Witness: He said, "You don't need it." And he said, "I will spend $20,000.00 to keep it out. I will take it to the Supreme Court, if necessary."

Mr. Konopka: No further questions.

Trial Examiner Feiler: Any further questions?

Mr. Konopka: I would like to ask Mr. Erwood a couple of questions, very short.

(Witness excused.)

189 ROBERT ERWOOD,

resumed the stand, was examined and testified further as follows:

Recross-Examination.

Q. (By Mr. Konopka) Mr. Erwood, yesterday I believe you testified that you had the four officers of the Union come into the office to discuss the FAA?

A. Well, we had what we thought were four officers. It turned out there were three officers and another individual.

Q. I think you testified when you were asked by Mr. Citrin, what would happen if they refused to resign from the Union, and your answer was, I inferred, that they would be discharged or rather, "We wouldn't need them." Do you recall that testimony?

A. I think so.

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Q. You were asked whether the employees or the other foremen who were not officers were interrogated as to whether they were members of the Union. You testified you did not interrogate them.

A. We assumed they were, that is why we were talking to them.

Q. And you further testified, "We told them that we were opposed to the Union." Is that right?

A. I don't remember saying that, but you can take it from me, that I am opposed to the Union.

Q. And you further told them that the Union was
190 not needed and you could do more for them. Is that right? And then Mr. Citrin asked you as to Owens' membership and then as to what would happen if he didn't resign. Do you recall that?

A. What was that again please?

Q. You were asked by Mr. Citrin about Mr. Owens' membership, and your discussion with him about the Union, and Mr. Citrin asked whether you asked Mr. Owens to resign, and you testified you did; and he also asked you what would happen to Mr. Owens, or what did you tell Mr. Owens would happen, if he didn't resign, and your testimony is as follows: "I told Oscar Owens he would be discharged if he belonged." And Mr. Citrin asked you, "Did you make the same statement to the other members, other foremen who were members of the Union?" And you said, "No, we restricted it to the officers." Do you recall that testimony?

A. Yes.

Q. Your answer—would you kindly read this—as to Oscar Owens?

A. (Reading) "As to Oscar Owens, the Company admits that it laid him off, refused to re-employ him and alleges the reason to be that he attempted to organize"—

Q. (Interposing) I would like to stop you there. The statement is that the reason was that he attempted to organize members. Your testimony as to Owens yesterday is not different from that alleged in the answer?

191 A. Not greatly different, no.

Trial Examiner Feiler: It seems different to me.

The Witness: I said yesterday that Owens was laid off due to a reduction in force. It is true. I further said he was not offered other employment, because of his activities on behalf of the Union.

Trial Examiner Feiler: That is right. That part of the answer, that is the reason you refused to re-employ him. That is the way I understand it now.

Mr. Konopka: No further questions.

Redirect Examination.

Q. (By Mr. Citrin) Mr. Erwood, when you first heard about the Foreman's Association of America, you were determined to stop the organization of foremen in the plant. Is that not so?

A. Yes.

Q. And you felt that the best way to stop the organization in the plant would be to get rid of those employees who were taking an active part in the organization of the Union, is that not so?

A. Not entirely so. I felt that the best way to stop the organization was to have the organizers resign their positions, the organizers and officers resign their positions—with the Union, I mean.

Q. You say you felt that the best way to stop organizing would be to have the officers resign their offices in the Union?

192 A. I felt the best way to stop it was to stop the people doing the organizing, and we therefore asked them to resign their positions as officers in the Union.

Q. You were interested in more than their mere resignation from the Union?

A. I was interested in stopping the organization.

Q. Oscar Owens did resign as an officer, did he not?

A. So we were informed.

Q. As far as your information went, he did resign as an officer of the Union, did he not?

A. As far as I know, as far as any information I had on it, yes.

Q. Then why did you take the position that you were not going to re-employ Oscar Owens?

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A. Because part of the promise of Oscar Owens was not only resigning his office in the Union, but to stop his activities on behalf of it. He claimed that he did resign his position, but he certainly did not stop his activities on behalf of the Union.

Q. What would you consider activities on behalf of the Union?

A. Trying to make other people join.

Q. Would you consider solicitation for membership as part of activities on behalf of the Union?

A. I would.

Q. I believe you testified that Edward C. Farr was a
193 supervisory employee in the Trim Shop Department?

A. That is correct.

Q. That is the same department that Fred Schieman was foreman of?

A. That is right.

Q. Do you know whether or not Mr. Farr is related to any of the executives of the Edward G. Budd Manufacturing Company?

A. He is.

Q. And to whom is he related?

A. I beg your pardon, the answer is No.

Q. Is there an executive of the Edward G. Budd Manufacturing Company by the name of Warren C. Farr?

A. No.

Trial Examiner Feiler: Does he hold any position?

The Witness: The general manager of the Budd Wheel Company is Warren C. Farr.

Q. (By Mr. Citrin) General Manager of the Budd Wheel Company?

A. He is.

Q. His offices are located in the same plant with your offices, are they not?

A. Yes.

Q. And he is the brother of Edward C. Farr?

A. Yes, he is his brother.

Q. The Edward Farr that is the top supervisor in the Trim Department, is the brother of the general manager of the Budd Wheel Company. Approximately how many

members, how many supervisory employees, did you
194 have at the Edward G. Budd Company in April, 1944?

A. I presume you are talking about shop supervisors, is that right?

Q. Yes.

A. I would estimate about 140 to 150.

Q. Now, the supervisory employees, Ernest McNary, Oscar Owens, Fred Schieman, Edward Bimberg, and Alexander Stanovich—they performed the usual and ordinary duties of supervisory employees?

A. They did, when they worked in that capacity.

Q. And they were performing those duties in April, 1944, is that correct?

A. That is right.

Mr. Citrin: No further questions.

Recross-Examination.

Q. (By Mr. Meder) You heard the testimony as to what Al Walton called these men who were in this meeting, did you not?

A. Yes.

Q. Did Al Walton make that statement?

A. Not to my knowledge.

Q. You were there, weren't you?

A. Yes.

Q. Did you hear him make that remark?

A. The meeting took place in my office.

195 Q. But you didn't hear that remark?

A. No.

Trial Examiner Feiler: Any further questions?

Mr. Meder: I want to renew the motions that I have made especially the motion relative to the amending of the Company's Answer.

Trial Examiner Feiler: Let us have a motion specified as the Motion to Amend the Answer.

Mr. Meder: According to the testimony brought out by the Board's counsel on cross-examination of Mr. Erwood.

Trial Examiner Feiler: I will reserve decision on that.

Mr. Meder: I also move to dismiss on jurisdictional

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grounds, the grounds stated in the Answer. I renew that motion at this time.

Trial Examiner Feiler: The motion is denied on that.

Mr. Konopka: I just have one item of rebuttal.

Mr. Meder: You understand that my Motion to Dismiss on jurisdictional grounds was made on the testimony that has been put in here by the Board?

Trial Examiner Feiler: That is right, and I think I will change my ruling on that to reserve decision on it in line with my ruling at the opening of the case, when you promised to submit some memoranda at the conclusion of the case. I will reserve my decision on that motion.

(Recess taken.)

196 Trial Examiner Feiler: On the record.

Q. (By Mr. Meder) The Edward G. Budd Manufacturing Company has its main office located in Philadelphia, does it not?

A. That is correct.

Q. And a plant here in Detroit, as you have already testified?

A. That is right.

Q. And the Detroit Plant is engaged, in peace time, in the manufacturing of automobile and truck bodies?

A. That is right.

Q. Now, it is engaged one hundred percent in the war production of truck bodies, is that right?

A. Ninety-five percent.

Q. I am asking some leading questions as I go along here. If any of you gentlemen object, I will quit, but we will get along faster this way.

What are the strata or classifications of supervisors at the Detroit Plant of the Edward G. Budd Manufacturing Company, beginning with the top strata?

A. Well, we have a general manager.

Q. General manager? How many of those?

A. One.

Q. Next step?

A. Superintendent.

Q. How many?

197 A. Seven.

Q. Next?

A. Assistant superintendents.
Q. How many?
A. Eight.
Q. Next?
A. General foremen.
Q. How many?
A. Thirty-eight.
Q. And the next?
A. Foremen, seventy-eight.
Q. Next?
A. Assistant foremen, five.
Q. Is that the last?

Trial Examiner Feiler: Excuse me a moment. These general foremen, are they different from the salaried foremen?

Mr. Meder: I am going to bring that out.

Q. (By Mr. Meder) There are seventy-eight foremen, and five assistant foremen. State whether or not the general manager, the superintendent, the assistant superintendent, and the general foremen are all salaried?

A. Yes, they are.
Q. What about the assistant foremen?
A. Hourly rated foremen.

Q. And is assistant foreman a temporary job or a
198 permanent job?

A. Well, they are more or less in the nature of a temporary foreman.

Q. What do you mean by that?

A. I mean that because of the variations in the production cycle, it is necessary to have to expand your supervisory rank sometimes for short periods and sometimes for fairly longer periods. When it is necessary to suddenly put on a group of supervisors, we put them on as hourly foremen.

Q. Where do you get them?
A. From the ranks.
Q. So your assistant foremen are in the hourly rated classification?
A. That is right.
Q. Approximately how many rank and file employees, sometimes known as production and maintenance em-

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ployees, has the Manufacturing Company here in Detroit?

A. I would say right now approximately twenty-nine hundred.

Q. These figures that you have given us here, are they approximately the same figures as the conditions which existed during the period covered by this case?

A. There is not any great change. There might be a change of one hundred to one hundred and fifty people, but I don't think there is very much more reduction than that.

Q. What is the rate range paid to assistant superintendents?

199 A. I didn't bring it, Mr. Meder. I didn't think you were going to question me on that. Wait a minute, I beg your pardon—

Q. Isn't it $525.00 to $650.00 per month?

A. $375.00 to $650.00 per month.

Q. Based on a forty-eight hour week?

A. That is right.

Q. And the range of general foremen?

A. $400.00 to $575.00.

Q. The rate range for foremen?

A. $325.00 to $400.00.

Q. The rate range that you are paying assistant foremen, the hourly rate is $1.21 to $1.44. Is that correct?

A. Correct.

Q. Tell us whether or not all your assistant foremen, practically all of them, are paid $1.44?

A. I would say that practically all cases of productive foremen, I mean the men who are assembly foremen, get the $1.44 rate. There are a few in the non-productive groups, such as labor foreman, sweeper foreman, and others, who are at the lower rate of $1.21.

Q. Tell us whether or not Owens and Schieman were salaried foremen?

A. They were.

Q. What was Owens being paid?

200 A. Owens was being paid $390.00.

Q. On a forty-eight hour week?

A. Yes.

Q. And Schieman?

A. Schieman was being paid $360.00 on a forty-eight hour week.

Q. Tell us whether or not you pay overtime to the supervisors over forty-eight hours?

A. We do.

Q. And on what basis?

A. We have received approval in December, effective the first of the year, 1945, to compensate our employees beyond the forty-eight hour week specifically—

Q. (Interposing) You are talking about supervisors?

A. I am talking about supervisors. Specifically, we were granted permission to pay them on the basis of a fifty-two and forty-eight hour work week.

Q. When you talk about a forty-hour work week, that is forty plus twenty percent? When you talk about a forty-hour week, it is forty hours plus?

A. For the forty-eight hour week we were granted permission, graduated down at the six hundred mark level.

Q. On a fifty-two hour week, then on overtime? That is, forty hours plus thirty per cent. Is that correct?

A. Yes.

201 Q. And your fifty-six is forty, plus forty percent?

A. On salaries of $400.00 or less.

Mr. Citrin: I wonder if we can go off the record for just a moment.

Trial Examiner Feiler: We will take a five-minute recess at this time.

(Recess taken.)

Q. (By Mr. Meder) Now, witness, this forty hours, that is forty plus twenty. You got approval from the Department in 1943 on that, did you not?

A. Yes.

Q. But the forty plus thirty and the forty plus forty for fifty-two and forty-eight, you got that approval last December?

A. That is right.

Q. Effective as of January 1st?

A. Yes, sir, that is right.

Q. And the limit on the twenty, thirty, forty, is up to six hundred dollars?

A. That is right.

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Q. How long have your superintendents been on a salaried basis?

A. Always.

Q. How long have your assistant superintendents been on a salaried basis?

A. Always.

202 Q. How long have your general foremen been on a salaried basis?

A. Always.

Q. How long have your foremen been on a salaried basis?

A. Foremen have always been on a salaried basis.

Q. And what about assistant foremen? You say on an hourly basis?

A. Hourly basis.

Q. In April, 1944, did you have the same classification or strata of supervision?

A. Yes.

Q. You had one general manager at that time?

A. Yes.

Q. How many superintendents?

A. Seven.

Q. How many assistant superintendents?

A. Well, without being absolutely sure, I don't think the figure has changed any. It wouldn't have changed more than one either way.

Q. And the number of general foremen is approximately thirty-eight?

A. About the same, yes.

Q. How about the assistant foremen, did you have more at that time?

A. A lot of hourly assistant foremen.

203 Q. Due to the fact that you cut down on production, you now have only five assistant foremen?

A. That is right.

Q. Now your hourly rated assistant foremen, state whether or not they get the same pay as the rank and file hourly rated employees?

A. They do.

Q. You first started bargaining with your rank and file employees through the labor organization in 1937?

A. That is right.

Q. That was the predecessor of the present UAW-CIO. Is that correct?

A. Yes.

Q. Your present contract is with Local 306, UAW-CIO, with your rank and file?

A. Yes, that is right.

Mr. Meder: Respondent's Exhibit 1.

(Thereupon the document above referred to was marked, for identification, Respondent's Exhibit 1.)

Q. (By Mr. Meder) I show you Respondent's Exhibit 1 and ask you whether or not that is a true copy of the present contract that you have on behalf of your rank and file employees, with Local 306, UAW-CIO?

A. Yes.

Q. I wish to refer to Article 1 of Section 1, and I
204 call your attention to the exclusion clause of those within the unit. I note by that section that you grant exclusive collective bargaining to rank and file employees excepting "foremen, assistant foremen, timekeepers, timestudy men." Is that correct?

A. That is right.

Q. Tell me whether or not since you first bargained, foremen and assistant foremen have been excepted from the previous contracts with the UAW-CIO, Local 306?

A. They have been excluded each time. Was that the question?

Trial Examiner Feiler: Are you offering these copies in evidence?

Mr. Meder: Yes.

Trial Examiner Feiler: You are doing that now? So far they have only been marked.

Mr. Meder: Maybe I won't offer them. They will clutter up the record.

Q. (By Mr. Meder) I will call your attention to Article 3, "Grievance procedure," with special attention to Section 8: "In settling grievances the following procedure shall be followed: (a) between an employee or his chief

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steward and the foreman in his department." Is that correct?

A. That is correct.

Q. Is that the way you have handled the first step of the grievance procedure since 1937?

205 A. That is right.

Q. "In case the grievance cannot be settled between the employee or his chief steward and his foreman, the chief steward of the department shall present the grievance in writing to the foreman of the department on a form provided for that purpose, and it shall be mandatory for the foreman of the department to acknowledge the receipt of the complaint in writing and enter his disposition thereon." Do you find that in the contract?

A. Yes, it is here.

Q. Tell me whether or not that step, being the second step in the grievance procedure, has been followed since 1937?

A. Yes.

Q. I ask you now whether or not in handling grievances with rank and file employees, whether or not you closely follow and insist that the various steps of the grievance procedure be closely followed in this order?

A. We do.

Q. I call your attention now to Section 8 (i) of Article (3), reading: "When it is necessary for a chief steward or a committeeman to leave his department, he shall notify his foreman of his desire to do so, and he shall not leave until a substitute worker has been provided in his place." Do you find that in the contract?

A. Yes.

206 Q. Tell us whether or not that clause is enforced, strictly enforced?

A. It is.

Q. And whether or not that clause has been in your contract with the UAW-CIO, Local 306, for the last several years?

A. It has. I don't remember whether that last has been in all the contracts, but it has certainly been in here for the last couple of years. I can't remember when it hasn't been in there.

Q. I now call your attention to Section 30 (a) of your present contract, reading: "When foremen and assistant foremen cease to act as supervisors and become production workers, they shall have seniority only from their original date of hiring." Just that far, then I will go on with the next sentence later. State whether or not that clause has been in your contract since it was first signed in 1937, or at least shortly thereafter.

A. I don't recall whether it was in the first contract, but it has been in the contract for a number of years.

Q. When it states, "only from the original date of hiring," they have seniority, it means they have seniority, not from the date they became foremen, but from their original date of hiring, is that right?

A. That is right.

Q. State whether or not that has been in the con-
207 tract, that is the effect of the word, about which you were questioned a while ago by Board's counsel.

A. That is right.

Q. The next sentence in Section 30 (a) reads this way: "All such foremen or assistant foremen shall act as such during the entire work week, and no such foreman or assistant foreman shall perform the work of any employee who has been sent home due to lack of work during any work week, including Saturdays and Sundays, except in emergencies, and for relief and instruction purposes." Do you find that in the contract?

A. Yes.

Q. State whether or not that clause has been in your contract with the UAW-CIO, Local 306, for some time?

A. It has.

Q. Whether or not that clause is strictly adhered to.

A. It is.

Q. Now tell me, you are negotiating now a contract, or have negotiated a contract with Local 306, have you not, and it is up for ratification next week?

A. It is.

Q. These clauses which I have called to your attention, these clauses have remained in the contract?

A. They have.

Trial Examiner Feiler: Off the record.

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(Discussion off the record.)

208 Trial Examiner Feiler: On the record.

Mr. Meder: I will now offer Respondent's Exhibit 1.

Trial Examiner Feiler: Any objection?

Mr. Citrin: No objection.

Mr. Konopka: No objection.

Trial Examiner Feiler: Respondent's Exhibit 1 is admitted.

(The document heretofore marked, for identification, Respondent's Exhibit 1, was received in evidence.)

Q. (By Mr. Meder) You have been head of the Personnel Department out at the Company for how long?

A. Well, a little more than six years.

Q. Tell us whether or not a large part of your job is the handling of grievances of the rank and file employees?

A. It is.

Q. Will you tell us, from the knowledge that you have gained in the period, in the handling of grievances, the approximate percentage of the grievances handled by foremen and settled by the foremen in the first step of the grievance procedure?

A. I would certainly say at least ninety percent of the grievances are handled, in the first step of the grievance procedure, and are settled by the foremen and the individuals.

Mr. Meder: Exhibit 2.

(Thereupon the document above referred to was marked, for identification, Respondent's Exhibit 2.)

Q. (By Mr. Meder) I show you a set of papers, bound together, which for the purpose of identification

209 have been marked Respondent's Exhibit 2; and ask you if you know what those papers are?

A. Yes, they are various forms that are used daily by supervision.

Q. And are they all the forms that are used by supervision, including foremen, or only those forms most frequently used?

A. Most frequently used.

Mr. Meder: I offer Respondent's Exhibit 2 in evidence.

Trial Examiner Feiler: Any objection?

Mr. Meder: I would like to ask one other question first.

Q. (By Mr. Meder) The forms which have been collectively marked Respondent's Exhibit 2—tell us whether or not those were in use in April, 1944?

A. Yes.

Q. And they are in use now?

A. They are.

Mr. Konopka: I have a question as to whether or not they are material or relevant. I would like to ask Mr. Meder his basis for introducing them.

Mr. Meder: To support our motion for the purpose of proving that the foremen are a part of supervision; for the purpose of proving that they exercise discretion and that they are a part of Management and are not employees within the meaning of the National Labor Relations Act.

Mr. Konopka: They have been recognized by the
210 Board, so I object.

Mr. Citrin: I object to the introduction of the exhibit on the basis that they are irrelevant to the issue which is here involved. We are not concerned with the appropriateness of a unit of supervisory employees. We are concerned with whether or not the foremen are employees within the meaning of the act, and whether or not they have the right to engage in concerted activities for the purpose of collective bargaining; not whether or not a unit comprised of such supervisory employees is appropriate for the purposes of collective bargaining.

Mr. Meder: May I ask one question. Are these forms the kind of forms that were used by Mr. Schieman and Mr. Owens, while they were working for you as foremen?

The Witness: They were.

Mr. Meder: If you please, sir, I do not offer this, having in mind the unit question; I offer this as to whether or not Owens and Schieman were employees within the meaning of the Act. I claim they were not employees within the meaning and definition of the Act, and not employees within the unit of the contract. I claim they are a part of Management, and not employees.

Trial Examiner Feiler: I think the Board has already ruled on this question in the past, but I will allow you to develop this evidence, if you want to, for the pur-
211 pose of the record. I will allow this exhibit. Exhibit 2 is admitted.

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(The document heretofore marked, for identification, Respondent's Exhibit 2, was received in evidence.)

Q. (By Mr. Meder) This item marked a gate pass. I take it that if an employee wants in at the gate at an unusual hour, the foreman issues his gate pass?

A. Yes.

Q. And there is a rate change notice. He has authority to sign this slip authorizing a rate change, for instance?

A. That is right.

Q. Those are only a couple of the pages. Let me ask you this: What are the responsibilities of your foremen, Mr. Erwood?

A. Foremen are the managers of their departments.

Q. Do they supervise the working force?

A. They supervise the working force.

Q. What do you mean by that?

A. Well, it is their responsibility to place employees on the right jobs.

Q. Now you say they are supervisors of the working force, and you mean by that, they place the men on the right jobs?

A. That is right.

Q. Men and women both, I take it you mean?

A. Their responsibility is to train people to perform the job. It is up to them to see that after training
212 people to perform the job, that they get the proper quantity of pieces per hour or per day, that the quality of that product is such that it will pass inspection, such that it will be acceptable by our customers. It is their job to see that people work in a safe manner. It is their job to see that their departments are clean and orderly and fit places for employees to work. They have to get the right kind of stock. They have to control scrap.

Q. When you say "the right kind of stock," you mean the right kind of materials for the employees in their department to work on?

A. It is up to the foremen to see that there is sufficient stock for operations under his supevision. If he doesn't have it, he has to go out and find out why, either by requisitioning from the proper departments or following up himself if that is the only way he can get it.

Q. You operate out there on a department basis?

A. Strictly.

Q. Isn't it true that material worked on is passed on in one department and then to another department and on to another department?

A. That is right.

Q. You talked about scrap. What are his duties with respect to scrap?

213 A. His duty is to see that employees working for him do not make scrap and it is his duty, if they are making scrap, to determine why, whether it is the fault of the employee, or whether it is improper equipment or tools, and if so, must make recommendations for the correction of the condition, so it won't continue.

Q. What are his other duties?

A. He has to see that his departments are properly manned. If he is short on help, it is up to him to see that requisitions are placed with the Employment Department for the proper quantities and proper type of employees.

Q. What has he, if anything, got to do with absenteeism?

A. If people chronically lose time, they affect the operations of his department. It is his job to interview these people, if possible, and try and see that he has a correct number of people, the proper working force at all times in the way of maintaining a proper working force. That is, first of all, to see that he has the right number of people on the job, and then to see that they are there.

Q. What are his other duties?

A. It is his job to recommend merit increases for his people, if his people are entitled to merit increases. It is his job to see that they have the automatic increases that the contract provides for.

Q. What do you mean by that? You have certain employees whose classifications are rated on a range basis?

A. Yes.

214 Q. And other employees whose classifications are rated on an automatic basis?

A. Skilled employees in most cases have a rate range.

Q. By far the larger proportion of your employees op-

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erate under classifications for which you have rate ranges. Is that correct?

A. Specific rate ranges, yes.

Q. That is where your merit increases come in, is that right?

A. Let me explain. There are two kinds of employees, those that have merit increases, and those who have automatic increases.

Q. The question I asked you a moment ago; is it not true that a vast majority of the employees work in classifications which are not controlled by automatic increases, but rather by merit increases?

A. That is not true.

Q. It is the other way around?

A. Yes.

Q. What percentage of rank and file employees would you say had their rate controlled by merit increases, just roughly?

A. Perhaps twenty-five or thirty percent.

Q. As to that twenty-five to thirty percent, state whether or not it is part of the foreman's duty to recommend the increases, the merit increases?

A. It is.

Q. And as to the other seventy percent, or whatever it was—seventy-five percent—controlled by automatic increases, it is up to the foreman to see that when he is entitled to an increase, he gets the increase?

A. That is right.

Q. State whether or not the foremen have anything to do or any responsibilities concerning the meeting of schedules?

A. Inasmuch as the foreman is the manager of his department, the foremen are provided with production schedules. They know what is expected of them by that day, and by that week and by the month. They know what the long range expectations are, and the short range expectations on schedules, and one of their most important jobs is seeing that production schedules are met.

Q. What, if anything, have foremen to do with disciplining, in your plant?

A. The foremen have more to do with discipline than

anybody else, inasmuch as they are the first line supervisors, and the employees are working directly under their supervision. It is up to them to see that people behave themselves properly while in the plant, and that when they do not behave properly, then it is up to them to recommend disciplinary action up to and including discharge.

Q. What, if anything, have they to do with timestudies?

A. The only thing they have to do with timestudies is when a standard is established on a job, and if they
216 find that they are unable to meet those standards, then they have the right to request a new timestudy on those jobs so that they can have the correct standard established.

Q. What other duties have they?

A. Well, inasmuch as the type of help that we have been able to hire in the past several years—

Q. (Interposing) A very tight labor market?

A. It has become poorer and poorer because of the necessity for hiring great numbers of female employees, and foremen have had a greater responsibility in the operation of their departments than they ever had before, because of the abnormal absenteeism which we all experience, and the abnormal turn-over,—the War Manpower Commission to the contrary,—it has been necessary continually for more and more people to be hired into the productive cycle. Consequently, they have had to be continually training people.

There has never been a time in the past three years that foremen have not been training unskilled help in an effort to get out their jobs, and it has become a great burden on them; but they have stepped up to the job very well and have certainly kept us going by their efforts.

Q. What is your probation period for rank and file employees under your contract?

A. Sixty-day probationary period.

Q. What, if anything, do the foremen have to do
217 with the probationary period?

A. The probation period is for one purpose only. That is to determine during a sixty-day period, whether or not the new employee is capable of performing the job, both by mechanical aptitude, physical attitude, physical

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condition—whether they have the right mental outlook on the job—in other words, it is up to them to see, within sixty-day period, whether they are the type of employees who should remain permanent employees of the Company; and we therefore have to rely upon them to see that they do not hire incompetent people, and incompetent people do not become permanent employees of the plant.

Q. You mean that they don't get on the seniority list?

A. That is right.

Q. What about transfer of employees? Do they have anything to do with the transfer of employees?

A. Yes.

Q. Tell us about it.

A. The foremen have the right to decide whether or not employees shall be transferred from their department to some other department. They exercise discretion in the transferring of employees from one department to another. They also have the right, in any necessity, to move people from one job to another; and while this is not commonly called transferring, when it is within a department,
218 it is their job to move the employees around under their supervision.

Q. What are some of the other duties?

A. I am kind of running down, Mr. Meder.

Q. What, if anything, have they got to do with the employees using the right tools and having those tools in proper working condition?

A. As I say, as I said a few moments ago, it is up to them to see that the employees do have the right tools and the tools in proper working condition; otherwise, the job either will not be done, or it will be done in an improper manner, which will contribute to the making of scrap.

Q. What are the duties in regard to the grievance procedure?

A. It is their job to keep harmony in their departments and to eliminate injustices.

Q. Do you say that is more or less of an extremely necessary part of their job in the last four or five years?

A. Without equipment, we could not operate.

Q. I didn't ask you that. I asked you whether it was more or less of an important job during the last four or five years.

A. Of course it is more important. It has become more important every year.

Q. Why?

A. Well, because of the reliance placed by Management on good working conditions among the employees, and if a supervisor is not interested in good working conditions and not willing to settle grievances and see that the people working under him get a fair deal, then we would be beset by labor problems, strikes, and slow-downs.

219

Q. You haven't had a strike out there in some years?

A. Going on two years.

Q. What, if anything, does a foreman have to do in specifying the type of employee he wants?

A. It is up to the foreman to tell the Employment Department what kind of people he wants, and specify what skills he needs for particular job vacancies.

Q. What, if anything, has he got to do with change of operations or method of operation?

A. It is the foreman's responsibility to change operations and change methods, if by so doing, he can improve the job, and he has complete authority to do so.

Q. What, if anything, has he got to do with promoting and up-grading?

A. It is his responsibility to see that the proper people are on the right jobs, and if necessary, to demote an employee. He has that authority. He certainly has the right to up-grade people. That is part of his job, to see that people are up-graded and given the benefit of promotions.

Q. Your plant operates on a very definite basis of up-grading?

A. Yes, in the past five years all of our senior people—I won't say all of them—but the major part of the senior people have been up-graded and all of the new people have come in on a lower wage level.

220

Q. Are supervisors up-graded out of rank and file?

A. I venture to say that ninety-five percent of our supervision has come from the ranks. It is our policy and has been for years, to promote supervision from the ranks.

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Q. What, if anything, have your foremen to do with responsibility for costs?

A. Well, the most important part of the business is seeing that the production, the products which are in production, are manufactured at a cost that is established by the Cost Department; otherwise the plant would run at a loss, and inasmuch as no plant can run consistently at a loss, it is the foreman's job to see that he gets the proper cost on his job.

Q. Tell us whether or not foremen are on a more liberal vacation basis than rank and file, and if so, what is the difference?

A. The rank and file employees at this time receive a bonus and a vacation. Technically, they are not entitled to a vacation. A salaried foreman is entitled to two weeks vacation with pay, and in many instances we give them more, depending on the number of hours they have worked, and the conditions they have worked under.

Q. Do you have a sickness allowance?

A. Yes.

221 Q. What is it?

A. Unlimited.

Q. Is there a sickness allowance among the rank and file?

A. None.

Q. State whether or not since 1943, you have operated a very extensive foremen's school out at the manufacturing plant?

A. We have.

Q. Whether or not you had these classes every day for supervision?

A. We do.

Q. Where do you get these teachers from?

A. From the plant. They are trained by the Government at Government expense.

Q. Trained to be what?

A. Teachers.

Q. Some of the subject-matters covered in these foremen training schools—perhaps before you tell us about that, tell us whether, while they go to their classes, they are paid their regular salary?

A. They are.

Q. What are some of the subjects?

A. Job instruction, job evaluation, and job methods. Those break down into some other subdivisions.

Job instruction is just exactly what the name denotes. It is teaching foremen to be instructors of their
222 people, teaching them to go about instructing new employees.

Q. During the course of instruction given to them, do they devote considerable time to plant policies, including labor relations?

A. In the subject of job relations.

Q. Will you answer the question, please?

A. Yes.

Q. What about safety?

A. That is a necessary part of any foreman's training.

Q. What about job evaluation?

A. Job evaluation is a subject that is not gone into too thoroughly, because of the Standards Department that sets up and establishes job standards.

Q. How about material handling and control?

A. That is a very important part of training.

Q. What about blue print reading and mechanical drawing?

A. They do that also.

Q. Did I ask you about labor relations?

A. Yes.

Q. Do you lay considerable stress on labor relations in this school?

A. Very much so. They are given instructions in the meaning of the Union contract.

Q. Do you know whether or not Schieman and Owens had some of these instructions?

223 A. I do know they did have.

Trial Examiner Feiler: We will take a recess.

(Recess taken.)

Trial Examiner Feiler: On the record.

Mr. Konopka: I would like to offer an objection to this entire line of testimony relating to the practice of the Company with reference to their foremen, and whether or not they are an appropriate bargaining group.

Trial Examiner Feiler: Well, the question of a bargain-

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ing group has not been raised yet. There has been testimony as to the duties of these foremen. That is as far as we have gotten.

Mr. Konopka: Mr. Meder ought to state what he is driving at.

Trial Examiner Feiler: Are you going to question about a bargaining unit?

Mr. Meder: I certainly have not so far.

Trial Examiner Feiler: Not so far as I can figure. I will overrule the objection at this time. You may renew it later.

Q. (By Mr. Meder) Now, in testifying about the duties of the foremen, I believe you said something about discharges. To what extent may a foreman be involved in discharges of employees working under him?

A. Well, the foreman has the right to recommend a discharge.

224 Q. What happens to that recommendation?

A. In the greatest majority of cases the discharge is sustained.

Q. What happens to it?

A. The individual is cleared from the roll, if the discharge is a good one. I mean if the reason for his discharge is sufficient.

Q. Well, say the foreman—I notice on Respondent's Exhibit 2, page 8—no, that isn't the one. Have you a form in Respondent's Exhibit 2 which foremen use for the purpose of discharge? Is it 9? No. 9, isn't it?

A. That is right.

Q. He has the right, then, to recommend that the particular foreman be discharged or laid off?

A. You mean a particular employee?

Q. I mean a particular production employee?

A. Yes, he does.

Q. If he makes a recommendation, what happens to it?

A. If he makes the recommendation, he writes it out.

Q. He gives the employee a copy?

A. And sends a copy to the Time Department. He sends the employee's copy on through and he is cleared by the various cribs and other places that have to do with turning in of Company materials. It comes through the Employment Department, and he is relieved of

his badge and anything else that he may have, and his wages are made up, and he is discharged. 225

Q. And I believe you also testified that he had a right to make out requisitions for help he needs.

A. Oh, yes.

Q. Is there a form?

A. The next page.

Q. Respondent's Exhibit, page 10? Is that right?

A. Yes.

Q. To what extent, in the laying off and promoting of a foreman, is seniority considered by the Company? I believe you have already testified on that, but I am going to ask you again.

A. I presume you mean promotion of a foreman from the ranks.

Q. No, I mean the promotion of a foreman to a higher grade or strata of supervision.

A. First of all, the primary requisite is whether or not the individual has the skill and experience.

Q. If all other things are equal, to what extent does experience count?

A. Then seniority would be the determining factor, other things being equal.

Q. How do members of supervision handle any complaint that they may have in your plant? I mean complaints that they may have as to their work or as to salary paid? I am talking now about April, 1944, and the present time, unless there has been a change. any change. 226

A. There has been no change.

Q. How is it handled?

A. The foremen have always had the right to go to their immediate supervisor, if they had a grievance, or condition that they wish corrected. Further than that, they have had the privilege of going all the way to the top plant manager if they so desire.

Q. Yourself as well?

A. They have come to me on many occasions.

Q. They have exercised that so-called right?

A. Many, many times.

Q. Do you know whether or not they have gone to

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higher supervision out in the plant on their complaints many times?

A. Yes.

Q. Has there been any complaint made to you by supervision to the effect that any supervision may have had grievances and not been given the opportunity to have them aired?

A. No complaints were made to me on it. I have told foremen that any time they had a grievance, to take it up with me, or to go all the way to the top.

Q. You worked in the plant before you were Personnel Manager, did you not?

A. I did.

Q. What did you do out in the plant?

227 A. I have done a lot of things. I have been a production worker. I have been a tool and die maker, a tool grinder, and done experimental work. I have done a great many things, skilled and unskilled both.

Q. Now in the course of your duties in the last few years, do you spend a considerable amount of your time out in the plant?

A. I spend every moment that I can get away from my desk out in the plant, and there is hardly a day goes by that I don't get some place in the plant.

Q. Now tell us whether or not in the exercise of these duties which you have testified the foremen have, whether or not they must exercise a considerable degree of discretion.

Mr Citrin: I object to the question as calling for a conclusion.

Mr. Meder: Whether or not from your experience—

Mr. Citrin: (Interposing) I further object to the question on the ground that it is immaterial.

Mr. Meder: I will withdraw the question. It will save a lot of time.

228 Q. (By Mr. Meder) Tell us, witness, whether or not in the duties which you say they have of changing methods of operation—from your experience and what you have seen in the plant—whether it is necessary for a foreman to use and exercise discretion.

Mr. Citrin: I object to the question and ask that the

answer be stricken. The question is immaterial to the issue here involved, and should be limited purely to Oscar Owens and Fred Schieman—the only two supervisory employees involved in this case.

Trial Examiner Feiler: I will allow the question.

Q. (By Mr. Meder) What do you say as to the duties of handling these probationary employees, in deciding whether or not they should be allowed to continue in the employ of the Company beyond their probationary period; whether or not a foreman such as these two involved in this case, whether they are required to exercise a certain amount of discretion.

Mr. Citrin: I object. It calls for a conclusion. No proper foundation has been laid.

The Witness: They do.

Trial Examiner Feiler: I will allow it.

Q. (By Mr. Meder) What about their discretion in the matter of discharges?

A. It is very great, in discharges.

Q. What about the handling of grievances?

229 A. The same.

Q. What about requisitioning additional help?

A. It is necessary.

Mr. Citrin: I assume I can have a continuing object to this line of questioning. It is immaterial. It calls for a conclusion on the part of the witness, and the questions as framed are too general.

Trial Examiner Feiler: You have a continuing objection.

Q. (By Mr. Meder) How about the placement of help in the proper jobs or in the portion of the department over which they have supervision?

A. It is very important, and a duty that requires great discretion.

Q. What about merit increases? Do they use discretion there?

A. They do.

Q. What about handling and granting leaves of absence?

A. They do.

Q. What about disciplining employees, other than discharges?

A. They do.

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Q. What about demotions or promotions?

A. They do.

Q. What, if anything, do the foremen have to do, as part of their duties, with the approving of clock cards and entries on clock cards, under certain conditions?

230 A. They approve the clock cards to this extent—quite frequently employees forget to ring clock cards when they come to work. They may work all day without a clock card ring, and it is required of the foreman that he Okay that time which is not registered on the clock card, that he authorize the payment of wages for that period that is not contained on the clock card. We have no other way of knowing, in the event an individual didn't ring his card and the timekeeper didn't check him on the floor, whether or not he was there or not. That places the responsibility on the foreman to say whether or not the individual was working.

Q. He must exercise discretion in that respect?

A. He does.

Q. How about whether or not he must exercise discretion in determining whether or not an individual meets the working standards?

A. Yes, he does.

Q. How about cost of operating his department?

A. He does.

Q. Had Fred Schieman, while working for the Company, been a trimmer?

A. No.

Q. How about this man Cadieux? Had he had any experience in trimming?

A. Many years of it.

231 Q. By reference to your records, can you tell us whether or not Cadieux was a trimmer, working as a trimmer, out in your plant in December, 1938?

A. Well, as a matter of fact, Cadieux was doing trimming way back in '35 or '36.

Q. Did he continue doing trimming? Was he doing trimming in '38 and '39?

A. Yes.

Q. Was he trimming in 1942?

A. Yes.

Q. And was he a cushion builder in 1940?

A. Yes.

Q. Was he a cloth cutter in June 1944?

A. He was.

Q. Take this man Moss, if you will, please; refer to his record and tell me whether or not he had any experience as a trimmer.

A. Moss has been a trimmer in our plant for twelve or fourteen years altogether. I presume longer than that.

Q. How about Marshment?

A. The record discloses that Marshment was a trimmer back in 1935.

Q. And a trimmer in 1938, was he not?

A. Yes.

Q. And a cushion builder and trimmer in 1940?

A. Yes.

232 Q. Witness, have you the figures showing the department payroll of the trimming department for January 1944?

A. Yes.

Q. Will you give us those figures, please?

A. Yes. In January, the payroll in that department was $28,882.00; in February, it was $27,721.00; March, $25,906.00; April, $24,992.00.

Q. As has been testified here, in the trim department, Ed Farr was supervisor, was he not?

A. That is right.

Q. You mean by that, he had control over the other supervision working in that department?

A. He was general foreman.

Q. And he had working under him as of April 1, 1944, Moss, Marshment and Schieman, is that correct?

A. Yes.

Q. Now tell us, was Moss or was he not, foreman of the sewing room?

A. Moss was foreman of the sewing room.

Q. And Marshment—did he or did he not supervise the foremen?

A. Marshment was the night supervisor in charge of both sewing room and assembly.

Q. And Schieman?

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A. He was foreman in charge of assembly.

Q. On days?

233 A. On days.

Q. So that Marshment was the sole supervisor under Farr on the night shift, while Moss and Schieman were on the day shift?

A. That is right.

Q. Moss was foreman of the sewing room and Schieman of the assembly room.

A. That is right.

Q. Now, what seniority had Moss in that department? Let me ask it this way—who had the least seniority among the men in that department, as foreman, among Moss, Marshment and Schieman?

A. Schieman had the least seniority in the department.

Q. His seniority was as of March 26, 1943?

A. That is right.

Q. And Marshment's seniority was as of March 15, 1943, is that correct?

A. March 15. That is right.

Q. Moss's seniority went back quite some years?

A. Yes.

Q. Now, after Schieman left that department, what happened? Did anybody take his place?

A. No.

Q. What did you do with Moss? Did he remain in the department?

A. Moss remained as foreman of both sewing and assembly, on the day shift.

234 Q. And what happened to Marshment?

A. Marshment remained as foreman of both sewing and assembly on the night shift.

Q. I think what I am about to ask you has been covered, but nevertheless, I want to ask you now about the time that Owens and Schieman were laid off. I believe you testified there were five other foremen demoted about the same time, is that correct?

A. Yes.

Q. And were they all demoted in April 1944?

A. They were.

Q. Now, Schieman was a metal inspector, was he not?

A. That is right.

Q. What about this fellow Spaulding we have been hearing about here yesterday—was he an assistant to Schieman?

A. No.

Q. What was Spaulding?

A. Well, Spaulding is an all-around trimmer. He is a man that could do custom made trim work, take an automobile from the bare frame and completely upholster it, put on all the garnishment and all the fine materials on that job. He is a man that we used principally over the year to do all the sample body work, all the sample trim work—an all around man in all phases of trimming.

He worked continuously at that sort of thing, on all sample jobs, up to '38 or '39 when we discontinued
235 body work and then he became a foreman.

Q. Of what?

A. He became a foreman of the sewing room, and I believe the cutting room as well—what small assembly work was being done.

Trial Examiner Feiler: Is the cutting the same as trim?

The Witness: The cutting room is where they take big layers of cloth and cut them to measurement.

Trial Examiner Feiler: It is not the same as the trim?

The Witness: All part of the same thing—all part of the same department. The cutting room is where they cut the cloth. The sewing room is where they sew it together.

Trial Examiner Feiler: You testified about a sewing room and a trim room. How about this particular cutting room, is it a subdivision?

The Witness: Yes, they specialize on cutting just like they specialize on sewing, and other places, on body trim.

Q. (By Mr. Meder) My question was whether or not Spaulding was a supervisor in April 1944.

A. Well, he certainly was classified as a foreman during that period.

Q. Was he an assistant to Schieman?

A. No.

Q. Who was he assistant to?

A. I think he worked directly under Mr. Farr.

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Q. Did you or did you not discharge Schieman?

236 A. No, Mr. Schieman was laid off because we were reducing force.

Q. Tell us whether or not he was offered a job in rank and file.

A. He was.

Q. What did he say when you talked to him?

A. He said rather than take a demotion, he wanted a release. We had some extended conversation.

Q. Is the Company willing, when an opening occurs, to restore his position, if he applies for it?

A. Definitely.

Q. Was Mr. Owens discharged by the Company?

A. Laid off when we were reducing our force.

Q. You did not, however, offer him the right to go down in the rank and file?

A. That is right. I refused him that.

Mr. Meder: That is all.

Redirect Examination.

Q. (By Mr. Citrin) In April 1944, what was Harold Moss's classification in the trim shop department?

A. He was a foreman of the sewing room.

Q. Was he classified as a foreman?

A. No, he was classified as an assistant foreman.

Q. Classified as an assistant foreman?

A. Yes.

237 Q. And what was Fred Schieman's classification?

A. Foreman.

Q. Of what department?

A. Of assembly, in the trim department.

Q. Did Mr. Schieman have the authority to supervise Harold Moss's work?

A. No.

Q. Did Mr. Moss take any orders from Mr. Schieman?

A. No.

Q. What does the trim shop department consist of?

A. Consists of the sewing room, the cutting room and the assembly department.

Q. What was Spaulding's classification in April 1944?

A. He was classified as a foreman.

Q. As a foreman or assistant foreman?

A. Assistant foreman.

Q. What department?

A. In the same department where Mr. Schieman was a foreman.

Q. Isn't it true that a foreman of a department has the right to give orders to assistant foremen in the same department?

A. Under some circumstances, but you are making a play on the word "foreman" and "assistant foreman." There is no difference in our organization.

Q. There was a difference in 1944.

A. No.

238 Q. Why do you call some men foreman and some assistants?

A. We call hourly men assistants, and salaried foremen, foremen.

Q. Who determines the difference between an hourly-rated and a salaried foreman?

A. Management.

Q. Why do you have that distinction?

A. Why?

Q. Yes.

A. Because the salaried foremen were more or less the permanent foremen, and generally the hourly foremen, as I told you some time ago, are perhaps the temporary foreman, up and down with the production cycle.

Q. So, there is a distinction between the salaried foreman and the hourly rated foreman?

A. Only in the manner in which he is paid.

Q. You also considered that the salaried foreman is a permanent man in the department, and the hourly-rated man is the one that you have promoted because of your cycle of production at that particular time?

A. That is right.

Q. Was Moss ever a salaried foreman in the trim shop department? When was that?

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A. Mr. Moss was a salaried foreman way back in 1937 and again in 1938.

239 Q. You say in 1937?

A. Yes.

Q. He was a salaried foreman?

A. He was.

Q. Or was he a salaried assistant foreman?

A. Well, the word is assistant here, yes.

Q. Don't those words mean anything to you?

A. It is a misnomer.

Q. It says on the card, "assistant?"

A. As far as we are concerned, a foreman is a foreman whether assistant or not.

Q. Why is the word in front of the name?

A. Just a poor custom, I presume, for which there is no reason whatsoever.

Q. So it doesn't make any difference what it says on the card? It doesn't make any difference.

A. No, all have the same relative importance.

Q. And for about a period of fifteen months during which Schieman was foreman in the trim shop department and Harold Moss was classified as an assistant foreman, you say Schieman did not have any authority over Harold Moss?

A. No, not to my knowledge.

Q. How much knowledge do you have of what goes on in the trim shop department?

A. I have a very thorough knowledge of what goes

240 on. I have taken the time to find out the answers to a lot of these questions.

Q. And it is your testimony now that during the period of time that Fred Schieman was foreman in the trim shop department, that he did not have any authority to give orders to Harold Moss?

A. He had no experience on sewing, therefore how could he give orders?

Q. He ran the trim shop department for fifteen months.

A. I don't know what you mean by running it. He ran one portion, which was assembly.

Q. Did he not also run the cutting room?

A. Not to my knowledge.

Q. Who was running the cutting room?

A. I don't know.

Q. Did you make an effort—you know so much about the trim department during those fifteen months—who was running the cutting room?

A. I said I don't know. I am trying to tell you all I know about the thing. When I can't answer a question, I will tell you that I don't know the answer to it.

Q. The cutting room was part of the trim department, was it not?

A. Yes.

Q. Schieman was foreman of the trim shop, was he not?

A. He was one of the foremen.

241 Trial Examiner Feiler: My understanding is that he was foreman of the assembly.

The Witness: One of the foremen—assembly was under his supervision.

Trial Examiner Feiler: The trim shop is split in three sections.

The Witness: The cutting room, assembly, and sewing room.

Q. (By Mr. Citrin) Did Cadieux ever become a foreman in the trim shop department?

A. Yes.

Q. When was that?

A. November 9, 1944.

Q. And what section of the trim shop department?

A. Frankly, I don't know.

Q. Did Cadieux—does he now have authority at the present time—higher than Harold Moss?

A. Harold Moss is still foreman on the day shift, of sewing and assembly, so he doesn't have higher authority than Moss.

Q. What shift does Cadieux work on?

A. On days, according to the record. I might be wrong on that, but the record shows days. It was days in November.

Mr. Meder: It is days now too.

Q. (By Mr. Citrin) But Cadieux is classified as a foreman in the trim shop department?

A. That is right.

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242 Q. Do you know what salary he is making?

A. Yes.

Q. What is it?

A. $1.44 per hour.

Q. He is paid on an hourly rate?

A. That is right.

Q. That means he is an assistant foreman?

A. That is right.

Q. Now, at the time that Harold Moss—at the time Cadieux received his promotion, did you make any effort to contact Schieman as to whether or not he wanted that job?

A. No.

Q. Well, he had done the job that Cadieux was doing, had he not, for fifteen months previous?

A. I don't know whether he had or had not.

Q. What do you mean—you are willing to re-employ Schieman in a job that he can do?

A. Just that.

Q. Can he do the job in the trim shop department?

A. Not to our satisfaction, but he has had a world of experience in the metal department and when an opening occurs in the metal shop, with the experience he has had—

Q. (Interposing) But he was not to your satisfaction, in the fifteen months that he was foreman? When he was foreman in the trim shop, did you ever have any complaint about his work?

243 A. No, not personally.

Q. What do you mean when you say he didn't do the job to your satisfaction?

A. I mean we have somebody we think is better than when Schieman was there.

Q. Well, Cadieux had never done that job before.

A. Cadieux had done all classes of body trimming.

Q. Now, this hierarchy, this strata of supervision that you testified to before on direct examination—you have listed that as being the general manager, seven superintendents, eight assistant superintendents, thirty-eight general foremen, seventy-eight foremen, five assistant foremen. Did you have the same strata in April 1944?

A. Approximately.

Trial Examiner Feiler: The same type of supervision, the same titles?

The Witness: The same classifications, yes.

Q. (By Mr. Citrin) Did you have eight assistant superintendents in April 1944?

A. Eight Assistant Superintendents, yes.

Q. Did you have thirty-eight general foremen in April 1944?

A. To the best of my knowledge, we did.

Q. Did you have seventy-eight foremen in April 1944?

A. No.

Q. How many foremen did you have in April 1944?

244 A. I can't tell you exactly, but we had seventy-five or eighty hourly assistant foremen that have since then been put on a salary.

Q. You had seventy-five or eighty foremen?

A. That is right.

Q. And those men were paid on an hourly basis in April 1944?

A. That is correct.

Q. And when were they put on a salary basis?

A. January 1, 1945.

Q. You testified that this questioning and interrogation of some of the supervisory employees occurred prior to the decision in the Soss Manufacturing Case.

A. If it is in there, I guess I did. Something was said about the Soss Manufacturing Case—put in there by counsel.

Q. Do you know what the Soss Manufacturing Case held?

A. Personally, I do not know the particulars.

Q. Do you know when the decision came down?

A. No.

Q. Do you know whether or not these assistant foremen were put on a salary basis after the decision in the Soss Manufacturing Case?

A. No, I don't know the answer to that.

Q. Who decided to put the Assistant foremen on a salary basis?

A. Management.

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Q. Are you part of management?

245 A. I was.

Q. Did you participate in any conference held, relative to putting assistant foremen on a salary basis?

A. Certainly.

Q. What were the reasons that the assistant foremen were put on a salary basis?

A. They asked for it. The consensus of opinion was that they wanted it, and we gave it to them.

Q. Is that the only reason?

A. Yes.

Q. Because the assistant foremen asked to be put on a salary basis?

A. That is correct.

Q. How did the assistant foremen ask to be put on a salary basis?

A. They asked for it when we discussed the Union. We asked them what their complaints were, and one of the reasons that was given—they would like to be on a salary basis. They were told it could be salary or hourly, as they saw fit.

Q. That was when, in April 1944?

A. That is right.

Q. When did you take action relative to putting the assistant foremen on a salary basis?

A. We started compiling information at that time, and we worked on the establishment of these rates for

246 a long time, and we filed for approval in August or September, and received approval in December.

Q. You testified before as to the duties of foremen; that it is part of their duties to control scrap. What do you mean by scrap?

A. I mean by scrap, that it is part of their duties to see that parts being manufactured are not manufactured in such a way that they have no value to the Company and they cannot be sold to a customer.

Q. Who determines whether or not a part can be sold to a customer?

A. You mean the final determination?

Q. Yes.

A. Inspection does that.

Q. I see. Well, inspection, in determining whether or not parts are suitable for a customer, do they follow any blue prints?

A. Certainly.

Q. Are those blue prints made up by the supervisory employees?

A. Are they made up by the supervisory employees? No.

Q. Were any blue prints made up by Fred Schieman and Oscar Owens?

A. Not to my knowledge. I would like to see it if it had.

Q. So that a standard for a certain work or a certain part was made up by somebody besides these supervisory employees, is that correct?

247 A. You mean by standards, you mean the specifications of the work to be performed?

Q. That is right.

A. Yes, by the engineering department.

Q. And it was merely the foreman's job to see to it that the part that was manufactured came up to the specifications in the blue print?

A. That is right.

Q. And Fred Schieman and Oscar Owens had nothing to do with the making of the blue prints?

A. Nothing at all.

Q. You mentioned that one of the duties of the foreman was to see that sufficient stock is available.

A. That is right.

Q. Do they have anything to do with the ordering of stock?

A. If they are running short on stock and people are beginning to stand around, it is up to them to see that they get the stock, go to the stock chasers and see that the proper quantities and right kind of stock are brought in so they can continue manufacturing.

Q. Who tells them what kind of stock they need?

A. Nobody tells them. They know what kind of stock they need. They can read blueprints.

Q. The blueprints say steel, or copper, or alloy—whatever type of stock is necessary, the blueprint states?

248 A. That is the purpose of a blueprint.

Q. Did Oscar Owens or Fred Schieman ever have to determine what particular stock to use?

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A. Not originally, that was for the engineering department to decide; but after the product gets into manufacture, then they are supplied with blueprints. They know what they have got to do. They have copies of blueprints.

Q. But they are told just exactly what stock to use on a particular part?

A. Why certainly.

Q. Did Oscar Owens and Fred Schieman have authority to buy stock and bind the Company?

A. Certainly not.

Q. Did they have anything to do with the financing of the stock?

A. No.

Q. Did they have anything to do with the amount of money that was spent for the stock?

A. No.

Q. Did they have anything to do with the public, in going out and purchasing stock or obtaining stock?

A. No.

Q. Did they have anything to do with contracts relative to the purchasing of stock?

A. No.

249 Q. So that their job merely consisted of knowing when there wasn't enough stock in the place—they would go out and get it according to the stock specified on the blue print?

A. Their job consists of many other things beside that.

Q. Relative to stock, what else did their job consist of?

A. Relative to stock?

Q. Yes.

A. Well, it was job to see if there was sufficient to continue operations.

Q. When you are talking about sufficient stock—the type of stock had already been determined for them, is that not true?

A. That is right. It is up to them to see that it was the right kind of stock, though.

Q. What do you mean, "To see that it was the right kind of stock"?

A. It was up to them to see that it was the right stock; the proper thickness and gauge; that the stock, if it is in

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a semi-manufactured condition when they get it, that it is ready to be used in that operation, is ready to start.

Q. That type of thing—the thickness has already been determined by a blue print?

A. Yes.

Q. And the foremen are told where to go to get this stock, are they not?

A. Oh yes. In most cases, the stock is delivered to the department by the stock department.

250 Q. If that stock isn't delivered, they are told specifically where to go and get stock?

A. Certainly they know.

Q. But they are told?

A. Yes, they are told where to go to get it.

Q. No discretion in that matter?

A. Certainly. They could stand around and do nothing, and let the people stand around.

Q. But their discretion consists merely in obtaining the type of stock already determined for them, told where to go to get it by somebody, is that not true?

A. Their discretion consists of seeing that the stock is there and knowing where to get it if it isn't there, and knowing what steps to take.

Q. Who tells them that?

A. That is part of being a foreman. That is one of the things learned in coming up through the ranks.

Q. It is not learned but told?

A. Part of the things they know are things they are told.

Q. They can't go anywhere to get it, can they?

A. They certainly can; if he didn't, he wouldn't be much of a foreman.

Trial Examiner Feiler: He gets it from somewhere in the plant. He does not actually go out?

The Witness: He doesn't go out in the market and

251 buy it, no, but he goes to the previous operations in the plant and finds out why he doesn't have it, why he is short on it.

Q. (By Mr. Citrin) You have also spoken of making the plant a clean and safe place to work. What do you mean by that?

A. Just that, that the foremen are responsible for the

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safety in the plant. Plants have so-called specialized safety men, but the real safety job is done by the foremen, not by the safety engineers.

Q. Do safety engineers set up certain standards? Do they?

A. That is right.

Q. Do the foremen make up those standards?

A. No, sir.

Q. They are told by the safety engineers what is the safe standard, and the foreman follows those instructions?

A. That is right. They have the right to make recommendations, though, and if they have unsafe working conditions in their plant, and they don't necessarily have to go to the Safety Department to have it taken care of.

Q. They make recommendations to whom?

A. The Engineering Department.

Q. And those recommendations may or may not be followed?

A. That is right. They may or may not be followed.

Q. If a foreman tells a man that for safety's sake, he should wear goggles, and the Safety Engineer doesn't think so, doesn't feel that the safety goggles are
252 necessary, the man wouldn't have to wear them?

A. That in itself is a very poor illustration. No safety man would ever tell a man not to wear goggles if the foreman thought he had to.

Q. Does a foreman go out and buy safety devices?

A. No.

Q. Manufacture any safety devices?

A. No. I will modify that answer by saying that foremen do make minor alterations to equipment, at times, to provide better working conditions, safer working conditions. Many of the safe practices that we have originated from the foremen—I believe most of them.

Q. Originated from their recommendations, is that not true?

A. Yes.

Q. You also say it is the duty of a foreman to see that the departments are properly manned, so a foreman could go from one department to another and take employees?

A. No.

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Q. He has the right to request employees, is that not true?

A. That is true.

Q. To whom does he make that request?

A. The Employment Department.

Q. The Employment Department is the department that determines whether or not, or determines how many men are going to work in a department?

253 A. Absolutely not. The foremen are the sole judge of how many people shall work on a job.

Q. If a foreman requested a hundred employees, he would get a hundred employees?

A. If he could show that he had need of that many employees.

Q. Who determines whether or not his estimate is correct?

A. Any foreman knows by the standards on the job how many people he needs, by the operations that are listed.

Q. Is he automatically given the number of people that he asks for?

A. That is the objective of the Employment Department. It doesn't always work out today that way, not in these days.

Q. If a foreman said, "I want two hundred employees," would he get two hundred employees?

A. Yes, if the job required that many.

Q. Who determines whether the job requires it?

A. It is all controlled by standards.

Q. Those standards are not made up by the foremen, are they?

A. No.

Q. You say it is also the duty of the foreman to meet production schedules. Those schedules are not made up by the foreman, are they?

A. No.

Q. He is told by somebody to get out so many pieces a week?

A. That is right.

254 Q. And what if he disagrees with this schedule?

A. If he disagrees and can prove it is wrong, then modifications are made in the schedule.

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Q. He has to prove that the schedule is wrong?

A. That is right.

Q. And he has absolutely nothing to do with making up the production schedule?

A. Not the original schedule, no.

Q. Not any production schedule?

A. It is up to him to determine whether he can get the product out or not. If he can get it out, he does. If a foreman feels that it would be physically impossible, then the job is studied by the Standards Department to determine whether the schedule is right or wrong. If it is wrong, he is not expected to get it out.

Q. A foreman does not have the right to cut down on a production schedule and say, "Your schedule calls for one hundred pieces. All I am going to get out is fifty pieces."

A. Not without a good reason, no.

Q. He has got to give a reason to somebody?

A. Certainly, we all do.

Q. These timestudies that you are talking about, that is setting up a standard on the job?

A. That is right.

Q. The foreman has nothing to do with making up those standards, does he?

255 A. No. Not unless they are impossible to make, then he has a right to ask for a review of the standards.

Q. But he himself does not review the standards?

A. No, the Standards Department does.

Q. All he does is ask somebody to make a time study, maybe?

A. When the re-timing is made on a job, the foreman is there, to prove that it can't be made.

Q. What does the foreman have to do with absenteeism?

A. Only one thing—try to reduce it.

Q. What discretion does he have in that matter?

A. He has discretion to discipline employees who are chronic offenders, and discretion to discharge them if he feels that they won't make any efforts to improve.

Q. What do you call chronic offenders?

A. A man who loses one or two or three, maybe four

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days a week, a man who takes every Saturday off, and maybe every Monday or every Tuesday off.

Q. Those are instructions that were given, that if a man takes off Saturdays, or is absent three days a week, that is absenteeism?

A. I wouldn't say instructions; any reason that a man is not on the job is absenteeism, and up to the foreman to determine whether is it good—whether they have good cause.

Q. What is good cause?

A. Sickness, accident, death in the family, going to
256 your draft board—I could name a thousand of them.

Q. Do you have a list of what you would consider good causes?

A. No, that is where discretion comes into it.

Q. Foremen were never given any instructions as to what would be good cause for being away from work?

A. A foreman wouldn't be worth his salt, if he had to be told that.

Q. You never gave your foremen any instructions as to what would be considered cause for being away from work?

A. Not in so many words, I don't presume. He is supposed to have a little intelligence.

Q. You say a foreman can discharge an employee?

A. Yes, he may recommend a discharge, I should say.

Q. To whom does he recommend the discharge?

A. Personnel Department.

Q. He doesn't have the right to just fire a man and tell him to get out of the plant, does he?

A. No man has the right to do that. I shouldn't say no man—very few have the right to discharge a man.

Q. You have got that right?

A. Not arbitrarily. I have to use a little discretion, too, when people are discharged.

Q. But all the foreman could do is recommend the discharge?

A. That is right.

Q. And he has to put down the reasons?

257 A. That is right.

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Q. And then that goes to the Personnel Department?

A. That is right.

Q. And the Personnel Department has the final say on whether or not the man is discharged?

A. That is right.

Q. And are those ordinarily passed by you?

A. Personally, you mean?

Q. Yes.

A. No. After all, I have got a great many people in the department who have various duties, and they pass on the discharges, a great many of them.

Q. Is it not true that the employees in the Personnel Department have certain instructions relative to discharges?

A. Yes.

Q. Is it true that they check the reasons assigned by the foreman for the recommended discharge to see that it wouldn't conflict with the Union contract?

A. Yes.

Q. And are the foremen given the list of what would be sufficient cause for discharge?

A. We publish, from time to time, rules and regulations which the foremen get copies of, regulations are being changed constantly; but the foremen are well aware of all the reasons for discharge.

258 Q. They have been told the reasons for discharge?

A. They have seen printed copies of the reasons for discharge.

Q. And if the situation falls within a given category or a given reason for a discharge, then they can recommend a discharge?

A. That is right.

Q. What discretion does a foreman have relative to a recommendation of a discharge?

A. He has all the discretion. He has ninety percent of the discretion. Our position has always been, in that sort of thing, that he is the one who has to live with this fellow, and if the fellow does not conduct himself properly, it is up to the foreman to discharge him. We don't make a practice of going into a department and discharging people over a foreman's head, unless it is of a serious nature.

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Q. I know, but the foreman recommending a discharge has to follow certain rules laid down by the Personnel Department?

A. Certain rules and certain unwritten rules.

Q. You said that a foreman is responsible for job transfers, that is one of his duties. What do you mean by that?

A. Moving a man from one job to another as the occasion may warrant.

Q. From one job to another in his particular department?

A. Yes, or approving a man's being transferred.

Q. Approving from one department to another?

259 A. Yes, that is right.

Q. How would that come about?

A. It is very simple. If you were working for me, and you saw a job over in another department that you liked better than the job you had, you would come to me, as your immediate supervisor, and ask whether you could have a transfer, knowing whether it was available. If it was available and I thought it was a promotion for you, or if I thought I could spare you, I would sign your transfer; if I thought I couldn't spare you, I would say no.

Q. Would the foreman first have to find out whether or not such a job was vacant?

A. He would necessarily have to find out whether it was vacant or not. If it were not vacant, then the other foreman who would sign, wouldn't permit the man to be transferred. Both foremen have to sign the transfer from one department to another.

Q. Is it approved by anyone except the foremen in the respective departments?

A. Yes, it is approved by the Personnel Department.

Q. Before any job transfer is made, it has to be approved by the Personnel Department?

A. We approve all changes of classification, and changes of rates.

Q. And there are certain instructions that have been

260 given to foremen relative to job transfers?

A. No, just a matter of plain common sense whether they can transfer a man or whether they can't.

Q. You say the foreman is responsible for costs?

A. That is right.

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Q. The cost on a certain job is established by the Cost Department?

A. That is right.

Q. Does the foreman have anything to do with that?

A. No.

Q. Wherein, then, does he have responsibility for cost?

A. Seeing to it that the product being manufactured in his department is being manufactured according to the standards which control costs.

Q. Those standards are made up by somebody else, and those costs established by somebody else?

A. Yes.

Q. All he has to do is be a bookkeeper, is that true?

A. Of course it is not true.

Q. You say the foreman's responsibility is to see to it that the tools are in proper working condition?

A. That is right.

Q. Does he have anything to do with what tools are used in the department?

A. Well, not too much, and yet he does. The original tooling for a new job of course is established by the Tool Department, by the Tool Design Engineering Department; but yet never was a job started that changes did not need to be made in the tooling. Those things are only proven by getting the tools and equipment into actual operating condition. Then changes must be made to compensate for the different factors that the Tooling Department had not taken into consideration.

261

Q. Can the foreman make those changes?

A. He can recommend them, and in many cases, make them.

Q. Without any recommendation?

A. Yes.

Q. Can a foreman change a die without consulting someone?

A. No, he cannot change a die.

Q. What changes can he make without consulting anyone?

A. Fixtures and small tools.

Q. Just minor changes?

A. Yes.

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Q. You say foremen can recommend merit increases and automatic increases. Now an automatic increase is what?

A. Thirty day and sixty day increases.

Q. So that all the foreman has to do is to see to it that employees on the job thirty or sixty days get an automatic increase?

A. We have hundreds and hundreds of raises going through where the automatic increase, that is, the
262 thirty day and sixty day date in the contract is not adhered to. We permit our foremen, if they have an exceptional individual, somebody doing very fine work within a few days or a few weeks, to give increases ahead of the automatic period.

Q. Let's just stick on the automatic increase for the time being. There is no discretion that the foreman has to use relative to automatic increases?

A. No, his only discretion is to see that he gets rid of undesirable persons before their raises become automatic.

Q. It is surely a question of bookkeeping, is it not?

A. Why, no, I wouldn't say so. Each foreman has a seniority list. He knows what people are working for him, and how long he has had them.

Q. Where does he get the seniority list from?

A. Every man hired has a seniority listing—

Q. Given to him?

A. That is right.

Q. He has nothing to do with seniority? Does the foreman have anything to do with seniority?

Trial Examiner Feiler: Except during the probationary period?

The Witness: To see that the employee is working on the right job and in accordance with seniority, that people are working the right hours. He has a lot to do with seniority.

Trial Examiner Feiler: At this time we will ad-
263 journ until two o'clock.

(Thereupon, a recess was taken until two o'clock p. m.)

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264 After Recess.

Trial Examiner Feiler: On the record.

Q. (By Mr. Citrin) Do general foremen and assistant foremen have the authority and power to bind the Edward G. Budd Manufacturing Company with respect to expenditures?

A. No.

Q. Do they have the power to bind the Company with respect to purchasing?

A. No.

Q. Do they have the power and authority to bind the Company with respect to financing?

A. No.

Q. Do they have the authority and power to bind the Company with respect to public relations?

A. No.

Q. Do they have the power and authority to bind the Company with respect to Government regulations?

A. No.

Q. Do they have the power and authority to bind the Company with respect to contracts?

Mr. Meder: What kind of contracts, Mr. Chairman?

Trial Examiner Feiler: Do you want to make that more specific?

Mr. Citrin: Any contracts.

A. I would have to say No, generally. I don't really
265 know what you are talking about. Certainly they do not make contracts.

Q. (By Mr. Citrin) Do they have the power and authority to bind the company in collective bargaining with respect to the rank and file employees?

A. Yes, I believe they do.

Q. In what way?

A. Inasmuch as foremen are supervisors and part of Management, actions taken by them certainly can be construed to be actions taken by the Company.

Trial Examiner Feiler: That is your interpretation of the National Labor Relations Act?

The Witness: Yes. I don't know whether I am right or not.

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Q. (By Mr. Citrin) Mr. Erwood, do foremen, general foremen or assistant foremen, bind the Company in collective bargaining with respect to the rank and file employees, relative to wages received by the rank and file employees?

A. Yes, in so far as violations are concerned, or if they have employees classified in the wrong classification; for example, if they worked them on a lower wages classification, and paid them a higher rate, the Company is bound by it, in a wage violation.

Q. Do the foremen determine the rate?

A. No, but we rely upon the foremen to see that the
266 people are in the proper classification and have the right rates.

Q. But that right rate that you are talking about, that rate isn't made up by the foremen?

A. It is not established by the foreman, but it is up to him to see that people working in the proper classification get the proper rate.

Q. This proper classification that you are talking about, that classification isn't made up by the foreman, is it?

A. No.

Q. Could the general foreman or assistant foreman sign an agreement with the rank and file of employees, stating that they will receive so much money a week?

A. No.

Q. Can they sign an agreement stating that they will work so many hours a week?

A. General foremen have signed agreements which have been adhered to by the Company in their relations with organized labor, not once, but many times.

Q. What sort of a grievance?

A. Seniority, and working conditions.

Q. How is seniority determined at the Edward G. Budd Manufacturing Company?

A. The overall policy of seniority is determined by the personnel department, but foremen and superintendents and general foremen have made mutual agreements with
organized labor that were not subject to approval
267 by the top Management; but which nevertheless were adhered to and carried out.

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Q. Just exactly what type of agreement? Give me an instance.

A. I can tell you of one agreement whereby shop supervision negotiated the manner in which they were going to pay up-grading in an arc welding classification, what rate they were going to pay them to start and how long to get up to the top rate. The agreement was made in the shop.

Q. Made by the general foreman in the shop?

A. The general foreman and superintendent.

Q. Could it have been made without the superintendent?

A. It could have been, but it isn't likely that that sort of thing would happen.

Q. Would you consider it binding?

Mr. Meder: Well, that is pretty much a question of law.

Trial Examiner Feiler: What is the practice of the Company? That is, on any of these agreements by the foremen, the Company, I suppose, has to adopt it, or doesn't it?

The Witness: Oh, yes I can tell you of agreements made in a number of instances, whereby employees split up their overtime work, not in strict accordance with the contract, but by mutual agreement with people in the department. It has always been my position in that sort of thing, that if that sort of agreement was satisfactory to the people in the department and satisfactory to the department and the foreman, I had no reason to object to it, and a
268 number of those agreements have been made.

Q. (By Mr. Citrin) Were they made subject to your approval?

A. I suppose any agreement of that sort would be made subject to my approval. A lot of things I don't approve, simply because I don't know about them.

Q. Would you consider it binding upon you?

A. Certainly I would consider it binding upon us, until there was some reason not to continue the practice.

Q. Can foremen decide which employees are going to work overtime?

A. In accordance with seniority agreement, and as in the case where I mentioned, where they agreed to split overtime earnings; that is strictly on the basis of seniority,

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but on the basis of all people in the department getting their portion of it, that that agreement was made, and is still in effect. I had no part in it. When I heard about it, I simply thought it was a good arrangement.

Q. That was an agreement made by the employees themselves, that regardless of who worked overtime, the overtime money would be split?

A. It was made in accordance with the employees themselves and the foremen, yes.

Q. Then how were the checks made out in that particular week?

A. They were made out as to what hours they
269 worked. I am not talking about a particular week. I am talking about month after month in every department where they split overtime work by mutual agreement.

Q. What do you mean? They decided that two employees work overtime one week, and the next week, a different two?

A. That is right, yes.

Q. Can the foremen decide which employees are going to work overtime?

A. In accordance with the Union bargaining contract, and in accordance with their ability to perform the work that is available to be done; in that event, the foreman has practically the sole responsibility. If an individual who has top seniority is not capable of doing the work to be done on overtime, the foreman has a right to put another man on the job who can do it.

Q. It is his absolute right to take any employee, and say, "You are going to work overtime"?

A. In accordance with seniority and ability in performing the job.

Q. This overtime work, doesn't that have to be approved in advance?

A. What do you mean by that?

Q. Well, is the foreman to decide—let's say your ordinary day shift runs when?

A. Seven to three, we will say.

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270 Q. Can a foreman in a department decide at three o'clock that he wants to run until five o'clock? Can he keep the shift working until five o'clock?

A. Not entirely, it is not as easy as that. The foreman in an unusual condition such as a breakdown which occurred in the middle of a shift, we will say, and some particular operation was behind, the foreman has the right to work men overtime on that job. He will of course work according to seniority if at all practical to do so.

Q. Let's say such a situation does arise. They had a breakdown and had to work until five o'clock. Does he have to obtain prior approval to have the shift work until five o'clock?

A. Not in emergencies, no.

Q. He just tells the men to keep working?

A. He asks the men if they will work overtime. The men themselves don't have to work, if they want to refuse.

Q. Will you look at page 18 of Respondent's Exhibit 2. Can you tell me what that form is?

A. Overtime authorization sheet.

Q. What is it used for?

A. It is used to indicate to the Time Department, men who are going to work overtime, and who are so authorized to work overtime.

Q. Now, the printed matter on the sheet says, "This report must be made out in duplicate and submitted
271 to the superintendent of the department before four-thirty p. m. of the day the overtime is to be performed. Absolutely no overtime will be allowed to any employees not listed on this authorization." Now, are those the foreman's instructions?

A. That is right.

Q. So that before a foreman works anyone overtime, he has to make out this sheet and has to have it approved by the superintendent?

A. It doesn't say it has to be approved by the superintendent. It merely requires the superintendent's signature. It says it will be submitted to the superintendent before four-thirty p. m.

Q. Does it have to be approved by the superintendent?

A. I say it should be approved by the superintendent,

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but regardless of that, if the superintendent were not in the plant, and these men had to work overtime, there would be authorization to pay those men whether the superintendent's signature was on or not.

Q. Would the paymaster honor this sheet without the superintendent's signature on it?

A. Yes, I believe he would.

Q. With just the foreman's signature on there?

A. Yes, I believe he would.

Q. What are your instructions to the foremen, relative to overtime? Is it not their instruction to receive

272 the superintendent's approval and signature?

A. Their instructions are to keep the superintendent apprised of the necessity for working overtime.

Q. And it is their instructions if they want to work overtime, to make out this sheet that is listed on page 18 of Respondent's Exhibit 2? Is that their instruction?

A. Yes.

Q. Do the foremen, the general foremen and assistant foremen, punch a time clock?

A. Yes.

Q. Do they work the same hours that the production and maintenance employees work?

A. No.

Q. Wherein do the hours differ?

A. Their hours depend entirely upon the exigencies of their job. The foremen have got to work whatever hours necessary to keep their department operating. They have nothing to do with maintenance, however.

Q. Let's take the production.

A. You are talking about the maintenance foremen?

Q. I am talking about the ordinary situation of the supervisory employees. Do they generally work the same hours as the production workers do?

A. No.

Q. Wherein do the hours vary from that of the pro-

273 duction worker?

A. It is customary for the foreman to come in about a half an hour earlier in order to get things lined up, and stay at least a half hour after the close of the shift to

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transmit any information he may have acquired during the day to the next foreman who is coming in early.

Q. Do supervisory employees wear the same clothes as production and maintenance workers?

A. I wouldn't know.

Q. Any special uniforms that are given to them?

A. We don't require any uniforms except female help.

Q. So that supervisory employees do dress the same?

A. If he likes, he can wear over-alls.

Q. Do supervisory employees do any of the manual work in the plant?

A. Except for relief and emergency purposes and instruction.

Q. You have no so-called working foremen?

A. No, sir.

Q. Prior to January 1, 1945, you had roughly eighty-five hourly paid assistant foremen?

A. Approximately that.

Q. What were their rates at the time? What was their hourly rate?

A. Their hourly rate you are talking about?

Q. Yes.

A. $1.21 to $1.44. Practically all of them were at the
274 $1.44 rate.

Q. Now your production rates are what, per hour?

A. They vary all the way from—what do you mean by production rates?

Trial Examiner Feiler: The rate for production workers.

Q. (By Mr. Citrin) The wage rate for production workers?

A. The minimum rate is ninety-one cents and the maximum for production work is pretty generally $1.28 up to probably $1.33 for production employees.

Q. Now, are foremen paid during the time they are absent from work?

A. You mean for sickness or accident or things of that sort, for good reason such as a death in the family or that sort of thing?

Mr. Meder: Such as attending this hearing.

The Witness: The answer is Yes.

Q. (By Mr. Citrin) How long can he be out?

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A. We have no written rule on the length of time that a foreman can be out, but I can tell you this, if he is out because of illness or an industrial accident, his pay goes on almost indefinitely. I can't recall when I have cut anybody's pay back because of his being off. I know of foremen who have been off seven, eight, or nine months and have gotten their check every month.

Q. When a foreman is absent from work, who reports that fact?

275 A. I guess the responsibility is his to report if he can't be in.

Q. If a foreman is out for a day, who has to approve his pay check for the week?

A. I okay all salaried clock cards or any absenteeism, personally, and I do it twice a month on salaried people. There are hundreds of them.

Q. You determine the reasons for the absence?

A. I am not too fussy about the reason, if he has a good record.

Q. Let's say a man was out for a week. Wouldn't you make an effort to find out why?

A. If he was off for a week, I would undoubtedly inquire.

Q. Before any foreman is paid for any day that he is out, does his time have to be okayed by somebody?

A. I told you that I okay all salaried clock cards for people who are absent.

Q. Now what is the vacation allowance for foremen?

A. Two weeks.

Q. Two weeks regardless of how long with the Company?

A. They have to be on the pay roll as of April of the preceding year.

Q. What is the vacation pay for the production workers?

A. There is none. There is a bonus paid in lieu of a vacation.

276 Q. That bonus in lieu of vacation is what?

A. I don't know. It is up for negotiation. The last one paid was two percent of their accumulated hourly earnings of the preceding year.

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Q. Would that be the equivalent of two weeks' pay?

A. One week.

Q. Let's say that a foreman is late in reporting for work. Does his time clock have to be okayed by somebody before he is paid for that time?

A. No.

Q. If a foreman is supposed to report for work at eight o'clock, and reports at twelve, will he get paid for that day?

A. He would, unless he made a practice of it. If he makes a practice of it, we might start questioning; if it hasn't been a practice—they are not required to work so many hours per week or so many hours per month.

Q. Going back to this matter of supervisory employees—the assistant foremen, are they responsible to the foremen?

A. No, sir.

Q. Is a foreman responsible to the general foreman?

A. Foremen and assistant foremen are both responsible to the general foreman.

Q. And are the general foremen responsible to the assistant superintendent?

A. Yes.

277 Q. And I assume, then, the assistant superintendents are responsible to the seven superintendents, is that right?

A. That is right.

Q. Now when a man becomes foreman, are they given any written instructions at that time?

A. No.

Q. Are they given any oral instructions as to their duties?

A. Yes, they are given oral instructions.

Q. And by whom are those instructions given?

A. By the general foreman or the assistant superintendent or the superintendent. They might even be given by the manager, if it was something in particular.

Q. Is there any special skill or any special training required before a production worker becomes a foreman?

A. He is expected to have the skill to perform the jobs under his supervision; if not actually perform them himself, at least to know how they should be performed.

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Q. I believe you testified previously that most of the foremen come from the ranks of production?

A. That is right.

Q. Before a production worker becomes a foreman, does he go through any special training period?

A. No.

Q. Just as someone in top Management, in going over a certain employee's record, feels that he could per-
278 form the duties of a foreman, and he is promoted to a foreman's job?

A. I don't know what you mean by top Management. Generally, when men are upgraded from the production ranks they are recommended by a foreman, the supervisors with whom they have direct contact; therefore, the ones who know the most about them.

Q. Let's say that a foreman recommends a certain employee to be made foreman. To whom is that recommendation made?

A. I would say, generally, either to the general foreman or to the superintendent.

Q. And does the general foreman have the authority to make someone a foreman?

A. He certainly has the right to make recommendations.

Q. Now, where does his recommendation go?

A. I don't know. You are getting away beyond me. They all have the right to make recommendations for promotions.

Trial Examiner Feiler: Who makes the ultimate decision?

The Witness: I would say the superintendent makes the ultimate decision in most cases. Sometimes it is the general foreman. It may be that the superintendent will allow the foreman to have the supervision over who he has got working under him. It quite frequently will happen that a general foreman will recommend, and, by his recommendations, really have the man upgraded to a foreman.

Q. (By Mr. Citrin) And before he becomes a fore-
279 man, no special training is given to him?

A. That is correct.

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Q. Are there any instructions given to foremen regarding Federal or State laws?

A. You mean after they become foremen?

Q. Yes.

A. We have been giving them instructions in training classes. We don't go into Federal laws particularly, because a foreman has enough to do without trying to give them a lot of legal training. He will have little chance to use it. We do explain to them what wage stabilization means, or try to, but we certainly don't go into any extensive training as to Federal laws or statutes.

Q. Do the foremen make efficiency ratings?

A. You mean—

Q. On the men under them?

A. No.

Q. Do they make out job tickets?

A. No, the timekeepers do that.

Q. Do they make out time cards?

A. No.

Q. Do they make reports on records of infractions of the rules by the employees under them?

A. Oh, yes.

Q. And are they in turn given a list of rules?

280 A. Foremen know our rules. I told you we publish them from time to time, put up in book form. We issue bulletins which are sent to foremen and supervisors. We post them on time clocks and on bulletin boards.

Q. And isn't it the duty of a foreman to recommend the hiring of any employee?

A. No. He may do so if he desires.

Q. That has got to go through the employment office?

A. That is right. The employment office passes on all hiring.

Q. I believe you testified that the foreman has the right to recommend the discharge of an employee?

A. That is right.

Q. But before any discharges become effective, it has to be processed through the Personnel Department?

A. That is right.

Q. In order to recommend the discharge of an employee,

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the foreman must state reasons for the discharge, for the recommended discharge?

A. Yes.

Q. They are given such instructions, certain reasons for which they cannot recommend a discharge of an employee, are they not?

A. No, that is what the Personnel Department is for.

Q. The foremen have the duty to recommend lay-
281 offs of employees. Do they do the physical laying off, telling the people their services are no longer required? Is it their duty to recommend lay-offs?

A. Certainly.

Q. Do they have to follow any rules in recommending the lay-off of employees?

A. Yes, seniority and other provisions of the contract.

Q. They don't have any discretion in that respect, do they?

A. Oh, yes.

Q. What is their discretion? Let's say you have got ten employees in a department, and the foreman wants to lay one of them off. Can he lay off anybody he wants to?

A. No, sir, but if the youngest who was on the list, who by seniority would be the one to be laid off, if he can't do the job that remains to be done, then the foreman moves up the seniority list until he gets hold of somebody that can. In other words, he has to determine that the people who remain are the people who can do the job.

Now, if it were necessary to lay off a man in a department, and he happened to be an arc welder, for example, and they needed all their arc welders and what they really needed was one less assembler or drill press operator or something of that sort, then the foreman would have to go up the seniority list and find a man to lay off who could not do the work available.

Q. If there were ten arc welders under a man in a
282 department, and two arc welders had to be laid off, how would the foreman go about whom to recommend for a lay-off?

A. In that event, he could lay off the two youngest according to the seniority list.

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Q. And according to the contract that you have with the Union?

A. Of equal ability—

Q. (Interposing) Not of equal ability.

A. Then it would be a matter of discretion which one he lays off. He has to retain the men who can do the job on the work that is left.

Q. Let's say you have got ten arc welders all drawing the same rate. They have different seniority. Now some of those men are probably better workers than others. You say that the foreman has the right to pick out of any of those ten, the one he wants to lay off?

A. I said that the men he retained, that would be the whole group minus the number he wanted to lay off, the men he retained, it would be necessary that they could do the work that is left, and if it was necessary to lay off a senior man in order to retain men who could do the work available, he would then lay off a senior man.

Q. What would the Union say about that?

A. Nothing, or nothing more than has been said in a thousand other cases when it came to a point of
283 proving it. The Union doesn't run the plant. We are bound by a bargaining agreement. We still have something to say.

Mr. Citrin: I am sure that with you as personnel director, the Union doesn't run the plant.

Trial Examiner Feiler: Strike that.

Q. (By Mr. Citrin) I will refer you to Section 28 of your contract with the Union, which is Respondent's Exhibit 1.

A. What page?

Q. Page 15, Section 28. Now do I understand your testimony correctly that this procedure as outlined in Section 28 is not followed by the foreman?

A. Yes, I would say it is followed.

Q. That says, "When lay-offs become necessary in a department, the following procedure shall be strictly observed:

"(a) Probationary employees shall be laid off first.

"(b) Employees will then be laid off according to their seniority."

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Is there anything in there that says anything about who is best able to perform the work?

A. I might say to you, Mr. Citrin, that a bargaining agreement is merely the skeleton outline of your Company policy and working agreement and that in general operating conditions there are many things that take place in a plant that are not covered by the specific rules in an agreement. If we were to try to write an agreement to have all the phases, all the clauses in
284 it that would take care of every condition, it would be a book ten times as big as this. There are many cases when we do not lay off the junior individual.

Q. Are instructions given to your foremen relative to lay-offs, that they don't have to follow the contract with the Union?

A. Not at all, but foremen in our plant have been operating with this bargining agreement for years, with few changes in it over the years, and they all know well what the meaning of the contract is and how they operate during lay-offs, and rehires.

Q. I still want to know, Mr. Erwood, when it comes to a lay-off, whether or not the contract provisions are followed or are not followed.

A. They are not followed, in accordance with my former testimony.

Q. And it is your testimony that a foreman is not bound to lay off, according to seniority?

A. Oh, yes, he is, if the people who remain can do the work that remains.

Trial Examiner Feiler: In other words, in an ordinary instance where there are ten arc welders and two of them have to be laid off, they will be laid off in accordance with the seniority?

The Witness: If the other eight can do the work.

Trial Examiner Feiler: But if one of the junior men
285 has some special line of work, like this man you testified before who did custom fitting, you would keep him on then, even though he is younger?

The Witness: Oh, yes. In all cases under the contract, the employee must be able to do the work that is available.

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Trial Examiner Feiler: I suppose in a vast majority of instances, the contract is followed?

The Witness: Ninety-five percent or higher than that.

Q. (By Mr. Citrin) Do the foremen have authority to grant wage increases?

A. The foreman has the authority to recommend wage increases.

Q. And this authority to recommend wage increases, is that according to certain standards that have been set down for him?

A. Yes, if you are referring to the automatic increases, there is a standard that is established.

Q. What other increases?

A. Merit increases.

Q. And what are merit increases based on?

A. Merit increases are given to employees because of ability to do a better job, to a man who has improved himself on the job.

Q. Those rates, are they fixed by the foreman?

A. What do you mean by the rates? The minimum and maximum is fixed by the Company, and he is able to move between the minimum and the maximum.

286 Q. What is the difference between the minimum and the maximum rates?

A. It would take me all afternoon to tell you the difference between minimum and maximum classifications. There is no set rule. We have all kinds of rates and all kinds of maximums and minimum.

Q. Would they vary as much as a dollar an hour on a job?

A. They vary ten cents to thirty cents, probably.

Q. And the foreman's authority would go merely as to a recommendation for a merit wage increase, is that correct?

A. Within the bracket.

Q. Within the bracket, all they can do is to recommend the increase?

A. That is right, but he isn't reversed once in a thousand times.

Mr. Citrin: I ask that that be stricken as not responsive.

Trial Examiner Feiler: Strike everything after, "Yes."

Mr. Meder: I object to that strike. That is not the rule on an unresponsive answer. The one who asks the question is limited by the rules of evidence on an unresponsive answer, and I claim that answer was related—the portion stricken was related to the question asked.

Trial Examiner Feiler: Read the question and answer.

(Question and answer read.)

Mr. Meder: All they can do is recommend the increase.

287 Trial Examiner Feiler: Read the question and answer again, please.

(Question and answer read.)

Trial Examiner Feiler: I think I will stick to my original ruling. That volunteered part isn't strictly a part of his answer.

Mr. Meder: I claim it was not volunteered. It was related. You have the right idea, if it is volunteered, it should be stricken. I do not think it was volunteered. I think it is related to the question.

Q. (By Mr. Citrin) Does the foreman have the right to permit employees under him to leave because of sickness or other personal matters.

A. Yes he has, for any personal matters, but not for sickness.

Q. Well, let's say an employee in a department comes up to the foreman and wants to go downtown a couple of hours to go shopping. Does the foreman have the right to tell him to go ahead?

A. He does.

Q. Will he get paid for those hours, the employee?

A. Of course not.

Q. Does the foreman have the right to tell employees under him when to report or not to report for work?

A. Oh, yes.

288 Q. The ordinary day shift, I believe you said, ran from 7:00 to 3:00. Could the foreman tell certain employees not to report to work until twelve o'clock?

A. He has that right in an emergency.

Q. Do they get paid for the hours from seven to three, or will they get paid just from twelve to three?

A. They are paid for the hours they work.

Q. Does the foreman have the right to settle any grievances without right of appeal by the employee to higher Management?

A. No.

Q. How many leaders are employed by the company?

A. I haven't any idea.

Q. Leaders come within the production contract?

A. Yes.

Q. You testified before that the first step of the grievance procedure is for the chief stewards of the department to present the grievance in writing to the foreman of the department?

A. No, sir, I did not so testify.

Q. What is the first step?

A. The first step is between the individual and his foreman or the individual and the steward and his foreman.

Q. Is that oral discussion?

A. Yes.

Q. The next step in the grievance procedure is for the employee or his chief steward to present the grievance in writing to the foreman of the department?

289 A. That is right.

Q. It further says, "on a form provided for that purpose." Who makes up that form?

A. The form has been in general use for years and years. It is part of the exhibit here.

Q. Let's go over Respondent's Exhibit 2. Will you look on page 2. Now that is the requisition form, is that right?

A. The requisition for material, yes.

Q. Now, does the foreman make up that form completely?

A. Yes.

Q. He makes out the quantity of material?

A. He makes out the whole thing.

Q. Even the unit value?

A. No, he doesn't price it. He wouldn't know what the price was. He makes out the quantity.

Q. He puts on the quantity and the department that it is to be charged to?

A. That is right.

Q. Does he put down the account number?

A. Yes.

Q. Where does he get that?

A. They know what the account numbers are. We have them listed. I presume they do. Some of them know it, and some of them don't. We have certain standard account numbers that they charge certain materials
290 to, whether it is maintenance or production or otherwise. They should know the account numbers, and I believe they do.

Q. I notice in the same bracket, there are also the letters "Ord." What does that mean?

A. Order or account number.

Q. By order number, that would mean the order number for a specific job?

A. Yes.

Q. Does the foreman make out the space which is provided for code?

A. Yes.

Q. What is meant by that?

A. Let me amend my answer. I am not certain whether they do that or not. I haven't made one of these out in years.

Q. How many copies of this requisition are made up? Do you know?

A. Two.

Q. And the Accounting Department gets one, and the Stores Department gets one?

A. That is right. Eventually, as they go through.

Q. All right, on page 3. "Employee's Department Transfer." What is the purpose of that form?

A. That is an authorization for an employee to be transferred from one department to another. It contains the approval of the department, of the foreman
291 from the department in which he is working; it also contains the approval of the foreman of the department to which he is going.

Q. Before that becomes effective, does that have to be signed by the Employment Bureau?

A. Yes, only so far as coming down to the Employment

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Department and having the records changed, showing the transfer from one department to another.

Q. Does an employee go to work, transfer from one department to another department, without the Employment Bureau signing this?

A. It would be physically impossible. He has to come down and have his badge changed, his pay roll number has to be changed, and that must go through the Employment Department.

Trial Examiner Feiler: Can someone in the department even though both of these foremen want the transfer, say, "I won't approve it."

The Witness: I can, yes.

Trial Examiner Feiler: You can?

The Witness: Yes.

Mr. Meder: You mean the rest of them out in the department?

The Witness: No.

Mr. Meder: You are the only one?

The Witness: I will tell you why I have that authority, if you want me to.

292 Q. (By Mr. Citrin) You say that you are the only one that can change this department transfer?

A. I can reverse it, I can make the man stay where he is, if I want to. That is to prevent one foreman from raiding another department.

Q. Aside from you, is there anyone else that can reverse this?

A. No.

Q. On page 4, is "Request for Leave of Absence."

A. That is made out by the employees, and signed by the foreman.

Q. Now, before the foreman has signed the employee's request for a leave of absence, does that have to be approved before it becomes effective?

A. Before he signs it?

Q. No, you said—I assume from this that an employee has requested a leave of absence from his foreman. The foreman makes out this form, is that right?

A. That is right.

Q. Now, before it becomes effective, does it have to be approved by anyone besides the foreman?

A. It has to be approved by me.

Q. Now, can a foreman refuse to make out a request for a leave of absence?

A. Yes.

Q. Now, can an employee, for example, come to any-
293 one besides a foreman and request a leave of absence?

A. He can do it, if he thinks he has a very good reason, and he has been refused it, certainly he can take it up in the form of a grievance to the Local Union, and handle the grievance that way.

Q. On page 5, there is a pass made out by the foreman.

A. That is right.

Q. Well, are there any instructions given to the foreman as to what an employee can take out of the plant?

A. An employee may only take out personal property. He may not take out anything else.

Mr. Meder: You mean his personal property?

The Witness: His personal property.

Mr. Meder: There is a lot of difference there.

Q. (By Mr. Citrin) Is there any discretion that the foreman has in making out this personal property pass?

A. If he doesn't think it is personal property, he doesn't make it out.

Q. Aside from that, does he have any discretion?

A. I don't know of any other he would have.

Q. Now, page 6. I assume that the purpose of this pass is to permit an employee to pass through the gates at the irregular hours, is that right?

A. That is right.

Q. Does that have to be signed by someone besides the foreman?

294 A. The foreman, and the pass showed the works manager's name on it, but I have never seen one signed by the works manager. The foreman's signature is always accepted. We don't use this except when we are just working a few people perhaps on a Sunday.

Q. Page 7. Is that dispensary report made by the foreman?

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A. No, it is made to the foreman. It tells him that one of his employees is partially or wholly disabled, as a result of an illness or accident, and recommends what kind of work to be given him.

Q. What does the foreman do with this report after he gets it?

A. That is his flag to know that perhaps he has got to give the man light work.

Q. Does he have to keep this dispensary report?

A. The foreman? I don't know. Maybe he throws it in the waste paper basket, but it indicates that he has got to do something special for an individual.

Q. Could he disregard this report?

A. If he did, and we would find out about it, he might get in trouble.

Mr. Meder: Besides, it calls for his discretion as to what he is going to do for the employee?

The Witness: Oh, yes.

Q. (By Mr. Citrin) In what way would he exercise his discretion as to what he was going to do?

295 A. It might be that the form required he be given light work. It would certainly be left up to the foreman in that event to see that he got light work. Maybe he couldn't work around arc welding because of sore eyes from the flash. It would be expected that he would be taken out of that location. He might have a skin rash from oil. We would expect that he would be taken out of that location. There are a thousand things that a foreman can do to help a person who is ill or has had an accident.

Q. Page 8, the Dispensary Discharge. What is the purpose of that?

A. That shows that the man who had been off because of illness or an accident has been discharged by the dispensary and can be returned to work. It is sent to the foreman, so he will know that this man is not suffering from any particular ailment any longer, unless it requires on the form here, that a certain kind of work be given to him. It is much the same as the other form.

Q. Page 9, Foreman's Recommendation For Employee's

Release. This form here—after the foreman makes it out, what does he do with it?

A. Gives the employee a copy, and sends two copies to the time clerks. The employee then brings the copy out to the various cribs and turns in his tools and turns in his badge and we send it to the pay roll department to make up his pay.

296 Q. When does it come to the Personnel Department?

A. After he has turned in his tools.

Q. Then the Personnel Department passes on whether or not to discharge the man, lay him off?

A. That is correct.

Q. Now on page 10, is a Requisition For Help. Now, after the foreman makes that out, does it have to be approved by anyone?

A. It is supposed to be approved by the superintendent.

Q. Is it?

A. In most cases.

Q. And then it goes to the Employment Office?

A. Yes.

Q. The form on page 11—is there anything that the foreman has to do with that?

A. No, except that we have them initial it generally. All it is, is so that it is used for several purposes. If one of the men wants an advance on his pay, we would have the foreman initial it. It is not something the foremen use too much.

Q. The form on page 12—what is that used for?

A. I am rather at a loss myself on this particular thing. This is a ticket that is used to move material from department to department, or from operation to operation, and it is attached to material. It is a moving ticket, showing the quantity and description and part number and identification of material.

Q. Now the form on page 13, what is that used for?

297 A. I don't know, to tell you the truth. It is a daily time statement. I'll be darned if I know how it works. Perhaps somebody else can testify to it. It is used every day. I have seen lots of them.

Q. Now, the form on page 14, the increase card.

A. It is an increase card which is sent through various

channels and finally arrives at the Pay Roll Department and is the authorization for a wage increase or a merit increase or an automatic increase.

Mr. Meder: Where does it originate?

The Witness: It originates with the foreman, as the first mark on the card shows.

Q. (By Mr. Citrin) That has to be approved by others besides foremen before it becomes effective?

A. If it were not for that, we would be in violation of wage stabilization every day.

Q. Now, the form on page 15, what is that used for?

A. That is a departmental requisition for work to be done. The foreman makes that out when he wants to get something—for instance, something is broken down or he needs something to help his job. It is used mostly for maintenance.

Q. Now, to whom does the foreman turn this in?

A. In to the maintenance department generally, or the department that performs the work. It might be the Sanitation Department if he wanted a particular machine cleaned.

298 Q. Is that work that the foreman requests automatically done?

A. It is supposed to be done. He is authorizing it, and it is being charged against his operations.

Q. The form on page 16, what is that?

A. The clock card.

Q. Does the foreman have to sign it?

A. They do, if an employee is to be paid for anything that doesn't show on the card.

Q. Let's say that this card didn't show any time punched in for Monday. Now the foreman would have to fill out the hours that the employee worked on Monday?

A. That is right. And initial it or sign it.

Q. Now the form on page 17, what is that?

A. That is a Grievance Report.

Q. Does he have to make one out for every grievance?

A. Not if he settles it verbally or orally.

Q. This is only for the written grievances which are given to him?

A. That is right.

Q. And he has to make out an original and two copies of this Grievance Report, is that correct?

A. Whatever the number is, yes.

Q. What grievances does the foreman have the right to settle?

A. Any that he can settle, the more the merrier.

Q. Which ones can he settle?

299 A. He can settle any grievances that he has the power to satisfy the person who has got a grievance.

Q. Let's say a man is an arc welder, and he doesn't feel he should be classified on this job, so he goes to a foreman and tells him that fact. Does the foreman settle that grievance?

A. He can, if he feels the man has a just grievance.

Trial Examiner Feiler: He can settle any grievance whereby he does not promise more than he has the power to give?

The Witness: That is right.

Q. (By Mr. Citrin) Will you give me instances of grievances that have been settled by the foremen themselves? Specific instances?

A. Well, let's see. There are so many, I hesitate—seniority, wages, job transfer, overtime compensation—

Q. (Interposing) All right, you mentioned overtime compensation. What grievance relative to overtime compensation can a foreman settle?

A. Generally when you have an overtime grievance, you have some man who thinks he is entitled to more hours of work than he has received; so when it comes to settlement, you either give it one way, that he was entitled to it, or he isn't entitled to it.

Q. Actually that should be decided on the basis of whether or not the man worked so many hours or not?

A. Not necessarily.

300 Mr. Meder: You have a six and seven day premium pay, do you not?

The Witness: Supposing he doesn't have the ability to do the job, and he worked overtime, and he is complaining about it, "Why couldn't I have that job? I could do that job." The foreman might say, "We had an important job last week. You couldn't do it." It is up to the fore-

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man to convince the man that his grievance is unfounded. If he succeeds, the grievance is settled. If he doesn't, it goes to the next step, which is writing.

Q. (By Mr. Citrin) If he can convince the man that he shouldn't have the overtime work, is that what you are saying?

A. Yes, then the grievance is settled.

Q. Let's say the man did work overtime, can the foreman refuse to pay him?

A. Not if he worked.

Q. So that relative to overtime, the grievance that you are talking about, then, is merely one where an employee says, "I think I should work overtime," and the foreman says, "I don't think you should."

A. I guess that is right.

Q. What grievances could a foreman settle relative to seniority?

A. Where the fellow might say, "I think my seniority entitles me to more money," and the foreman says,
301 "You aren't." That is settled.

Q. Isn't that a question of bookkeeping?

A. Sometimes it is an interpretation of bookkeeping.

Q. What interpretations would arise?

A. A thousand of them. Some man who has fifty-nine days thinks he has sixty.

Q. Isn't that a question of computing, finding out when he started to work?

A. Yes.

Q. What discretion is there with the foreman?

A. I wouldn't know.

Q. What other grievances can a foreman settle?

A. Wages.

Q. Let's take the question of wages.

A. A man says, "I am worth more money." And the foreman might say, you aren't. So the grievance is settled.

Trial Examiner Feiler: Maybe.

The Witness: As far as the foreman is concerned, it is settled.

Q. (By Mr. Citrin) The job calls for a certain pay rate, doesn't it?

A. That is right.

Q. The foreman can't go beyond that pay rate, can he?

A. There might be a group of rates there. There might be twenty rates. A man might say, "I think I am
302 worth more money on this job." And the foreman might say, "You haven't been on it long enough, or you haven't done a good job."

Q. Say he wants to give him more money?

A. Then he puts in a recommendation for a wage increase, and that settles it.

Q. It is not settled when the foreman puts in the recommendation?

A. Not until he gets it in his pay check, it isn't, no.

Q. Someone has to approve that recommendation of the foreman?

A. Three or four people, yes.

Q. Any other instances of grievances?

A. I have been handling grievances for eight years. I have no doubt handled ten thousand of them. If I had known, I would have brought my grievance file and laid them down. We could have gone over them one by one.

Mr. Meder: Can't you tell him some more grievances that you have got?

The Witness: Somebody might want more working hours, or doesn't like the job he has—

Trial Examiner Feiler: I think it is pretty clear what a foreman can do about settling grievances in the shop. There is no doubt in my mind that he has some power, no doubt that he cannot act as general manager.

Mr. Meder: And he cannot violate wage stabilization.

Mr. Citrin: Thus far, I haven't heard of any griev-
303 ance that a foreman can settle unless he tells a man "No."

The Witness: Well, that is settled, isn't it?

Q. (By Mr. Citrin) Will you give me a grievance a foreman could settle, binding the Company, without anyone else in the Company approving it?

A. I don't know how any foreman can bind them except to the limit of his authority.

Mr. Meder: That isn't the question asked.

Trial Examiner Feiler: I don't think we should pursue this.

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Mr. Citrin: Mr. Examiner, they are trying to bring out here that foremen are part of Management, all the duties that foremen have and the different ways that a foreman can bind the Company. This man says he has handled eight to ten thousand grievances. I want to know one grievance that a foreman has a right to bind the Company on, that wouldn't require the approval of someone higher than the foreman before it is settled.

Trial Examiner Feiler: Without knowing the Company, I can testify that probably there would be fifty of them.

Mr. Meder: I could give you a hundred.

Trial Examiner Feiler: A foreman, it has been testified to, has certain authority—call it limited—of course it is subject to control higher up, but I certainly will deduce that within the limits of his directing power in a
304 particular department or shop, the foreman can do anything that he wants to. Now we could have some specific instances.

Mr. Citrin: I would like to inquire of the witness what are the specific instances.

Trial Examiner Feiler: I won't allow it, unless you give me a reason why. Do you want to make an offer of proof on it? I know this is an important question, but we have been going into it for a long time. You can almost have an agreed statement of facts on what a foreman does or does not do.

Now, if it will help your case any, if you can show me, I would like for you to go ahead.

Mr. Citrin: I won't make an offer of proof. This is an adverse witness. I certainly don't know what an adverse witness is going to testify to. I wouldn't put myself in the position of making an offer of proof. I would like to know instances where foremen can settle grievances, what they have authority to settle.

Trial Examiner Feiler: Only the fact that this is a crucial question, which probably will go higher, stops me from cutting the examination off, but I will allow this to continue. I will allow both sides full freedom of examination on these points.

The Witness: I think that the foreman binds the Company on all the decisions that he makes.

Mr. Meder: You mean if they are not appealed.

305 Trial Examiner Feiler: Let's not have cross-examination out of turn. The specific question is to give some instances of grievances that a foreman can finally settle.

The Witness: Yes, I can tell you that foremen have discharged people in the past, in the plant, and through the use of the grievance procedure by the handling of it through the various steps, the Company has been obligated to pay the individual back wages for the discharge. That certainly is a case where the foreman has bound the Company by one of his acts. Grievances have been written and when the matters have been brought to light and all the facts brought out, the Company has been obligated to make restitution for the mistakes of Management, of foremen.

Trial Examiner Feiler: I think again the questioning is something along this line—what problems and grievances would come up in the shop that a foreman would settle without having to go any further?

Mr. Meder: You mean if it were not for the contract.

Trial Examiner Feiler: No, I am trying to re-phrase the main question, but if the witness doesn't understand—

Mr. Meder: If it weren't for the contract, he wouldn't have to go any further.

Mr. Citrin: I would like to have an answer to my question.

Trial Examiner Feiler: You try now.

306 Q. (By Mr. Citrin) Give me an instance of a grievance that a foreman can settle that will bind the Company, and which does not require the approval of persons in higher authority than the foremen themselves?

A. Well,—foremen have on numerous occasions promoted men within their department or from a lower occupation to a higher occupation, and required no approval of anybody else but the foreman. He was satisfied that the individual was entitled to the other position, and he promoted him. He certainly bound us on that when he admitted they were entitled to promotion.

Q. Isn't that what you call a job transfer?

A. Call it whatever you like, it is a promotion from a lower rate to a higher rate.

Q. From a lower rate to a higher rate, you say that aside from automatic pay increases, a foreman has the authority to promote a man or give him a higher rate of pay without having it approved?

A. From a lower paying classification to a higher classification, he does it every day in the week.

Q. And that isn't approved by anyone else?

A. No.

Q. What would you call a lower classification to a higher classification?

Trial Examiner Feiler: Wouldn't that be within the
307 brackets for the job?

Mr. Meder: He is talking about classification to classification rather than within the brackets of the classifications, is that correct?

The Witness: That is right. Upgrading them from a small punch press to a large punch press. It is a different type of machine, carrying a different rate. A large punch press carries a higher rate than a small punch press.

Q. (By Mr. Citrin) That does not require approval of anyone besides the foreman?

A. No, sir.

Q. How many men can a foreman put on a large punch press?

A. It depends entirely on your labor turnover, and you have a continual turnover in plants these days. You are constantly feeding in new people.

Q. Wouldn't the production schedule call for so many men working on a large punch press?

A. But suppose a man quits or is fired, and a vacancy exists. The foreman has got to take somebody and put him up on that vacancy.

Trial Examiner Feiler: And the foreman decides that?

The Witness: Yes.

Q. (By Mr. Citrin) Can a foreman increase the number of men working on this press?

A. Within limits. He cannot put forty men to do a
308 thirty-man job.

Mr. Citrin: No further questions.

Mr. Konopka: No questions.

Recross-Examination.

Q. (By Mr. Meder) If it weren't for the steps provided in the grievance procedure in the contract, wouldn't in the vast majority of cases of grievances of employees working under a foreman, be finally settled by the foreman?

Mr. Citrin: Objection. That calls for a conclusion and is speculative.

Mr. Meder: I do not ask for any conclusion. What I want to know is what the practice would be if it weren't for the steps of the grievance procedure.

Mr. Citrin: The question is speculative. You have got a contract, and it has been enforced for a long period of time.

Trial Examiner Feiler: Were you employed by the Company prior to the signing of the contract with the CIO?

The Witness: Yes.

Mr. Meder: What was the condition prior to the time you had the contract with various Unions?

Mr. Citrin: I object. It is immaterial to the issue involved here.

Trial Examiner Feiler: Let us see if the witness is qualified to answer. I think the first contract was in 1937.

The Witness: 1937.

309 Trial Examiner Feiler: Prior to 1937, did you have any job in personnel management with the Company?

The Witness: A year prior to that.

Trial Examiner Feiler: What was the job?

The Witness: I was assistant to the personnel director, and safety director.

Trial Examiner Feiler: Were you familiar with the work of foremen?

The Witness: Very much so.

Mr. Citrin: I object. We are not interested in what happened in 1937.

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Trial Examiner Feiler: I will allow it. The weight of it is another question.

Q. (By Mr. Meder) What is your answer?

A. My answer is that were it not for the grievance procedure, all the grievances would be settled by the department foremen.

Q. All settled?

A. Yes.

Q. That wouldn't necessarily be true if he were guilty of a wage stabilization violation, would it?

Mr. Citrin: I object.

Mr. Meder: Would it?

Trial Examiner Feiler: I will allow it.

The Witness: Well, within the limits of his authority, certainly a foreman, even before the advent of the
310 bargaining contract we operate under, had no authority to grant wage increases beyond the established practice.

Q. (By Mr. Meder) Suppose someone in a particular department asked the foreman to be allowed to work a certain amount of overtime, and the foreman thought he was entitled to it, could anybody reverse the foreman in such a grievance?

A. Before, or now?

Q. Now.

A. Yes, he could be reversed on it now. Somebody along the line could say—

Q. (Interposing) That is not the question I asked you at all. I said this: Supposing a man claimed that he is entitled to a share in overtime for this week, and he proves to the foreman that he is entitled to it, under the contract, because of his seniority; is there anybody who can reverse the foreman in that decision?

A. No, sir.

Q. Or suppose he claims he is entitled to certain overtime and the foreman allows that overtime. Is there anybody who can reverse the foreman on that overtime approval?

A. Not if he is entitled to it, no.

Q. He comes to the foreman, he claims he has worked and gone into the seventh day with forty-eight hours, and

that he hasn't been allowed the proper overtime for the seventh day. The foreman makes a determination,
311 and decides in favor of the man. In practice, is there anybody who can reverse him?

A. No.

Q. Another man comes in and says he had gone into the seventh day with forty-eight hours and was called in to work, and there was no work for him to do; and the foreman finds it to be a fact. Is there anybody that can reverse the foreman?

A. No.

Q. Another fellow comes in and makes a complaint that he is entitled to certain overtime for the seventh day. The foreman says, "You haven't gone into the forty-eight hours." He shows that he didn't go forty-eight hours because there was a holiday. The foreman allows overtime for the seven days. Is there anybody who can reverse him?

A. No.

Q. A man goes to the foreman and he makes a claim that he is entitled to time and a half over the sixth day. The foreman says, "Wait a minute, you went out. You didn't work three hours of a particular day." And he says, "That is true, I didn't go into the sixth day with the full forty hours. I only had thirty-seven hours. The reason I didn't, I suffered an accident three hours before time to quit for the day. I was sent home by the dispensary." The foreman finds that is true. He makes a decision. Is there anybody who can overrule him?

A. Not if he is right.

Q. Another employee claims the ventilation is bad
312 in the department. He kicks about having a window closed. The foreman finds that the window can be opened and sees that is opened. Can anybody reverse that foreman?

A. No.

Q. The foreman decides that he is not going to keep Joe Doakes on the full probationary period, and five days before Joe Doakes hits his full probationary period, the foreman gives him a lay-off slip. Is there anybody who can reverse that foreman?

A. No.

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Q. A foreman decides to raise a fellow from one classification to a higher classification and somebody in the department kicks. They reach an agreement amongst themselves. Is there anybody who can reverse the foreman on that decision?

A. No, sir.

Mr. Meder: It seems to me I could keep up for three days, if I wanted to.

Trial Examiner Feiler: Why don't you?

Mr. Meder: I am not going to.

Q. (By Mr. Meder) Now, as a matter of fact, on merit increases are your foremen ordinarily reversed or ordinarily sustained?

A. They are ordinarily sustained.

Q. When you say, "ordinarily sustained," what do you mean? Would you say that once in a thousand
313 times, roughly, the foreman is not reversed?

Mr. Citrin: I object. It is a leading question.

Trial Examiner Feiler: I will sustain the objection.

Q. (By Mr. Meder) State whether or not the practice is, in as many as nine hundred and ninety-nine cases out of a thousand, out in your plant—when a foreman recommends a merit increase, that the decision of the foreman is not reversed?

Mr. Citrin: I object. It is leading.

Trial Examiner Feiler: It is still objectionable. What percentage of recommendations?

Mr. Meder: I would like to have a ruling on it.

Trial Examiner Feiler: I sustained it.

Q. (By Mr. Meder) Answer this question, will you: From the experience that you have had in the Personnel Department, can you give us any idea of how many cases out of a thousand, the last thousand cases you have had of merit increases, that there has been a reversal of the decision of the foreman?

A. Well, inasmuch as I am the man who reverses—

Mr. Citrin: We don't want another long story.

The Witness: A handful. It wouldn't be twenty that I have reversed in the past year.

Q. (By Mr. Meder) Now, I want to ask this question, and if it is objectionable, I am going to insist on an

answer to the question. If it weren't for the provi-
314 sions of the grievance procedure, wouldn't the decisions of the foremen on grievances be final?

Mr. Citrin: I object to the question. It is purely speculative. There is a contract between the parties, and to ask this man what would the procedure be if there weren't any grievance procedure and weren't any Wagner Act—it is purely speculative.

Trial Examiner Feiler: I will sustain it. We are back to where we were before. You were personnel director prior to 1937. What was the situation then as regards the number of grievances or the percentage that were handled by the foreman?

The Witness: Grievances were unknown in those days. They have been an outgrowth of the bargaining procedure. A few so-called grievances were taken care of if they came about. It has only been since the advent of the Wagner Act and collective bargaining that we have had the formal grievance procedure and the large number.

Q. (By Mr. Meder) What is there today that keeps a foreman's decision on a grievance from being final, in your plant?

A. The grievance procedure.

Mr. Meder: That is all.

Redirect Examination.

Q. (By Mr. Citrin) Are these merit increases that the foremen recommend—can he be reversed on every one of those recommendations that he makes?

315 A. He can be, yes.

Q. Now, take the situation that Mr. Meder propounded, about an employee claiming that he has worked seven days, and he is entitled to time and a half for the seventh day he worked. Let's say the foreman says, "No, you are not entitled to the seven days," would that decision of the foreman be final, and finish it?

A. If the decision of the foreman were wrong, no, he would be reversed in that event.

Q. Take the situation of an employee who says, "It is stuffy in here; I would like to have the window open."

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And the window can be opened, but the foreman doesn't open it. Is that decision final?

A. It doesn't necessarily have to be, but it should be.

Q. But it could be appealed to someone higher up?

A. Yes.

Q. And in the same situation, if the foreman opened a window and a group of employees complain that it is drafty. Does the foreman's decision have to be final on that grievance?

A. Not if he is wrong, it doesn't.

Q. Isn't it true, then, that the foremen in deciding grievances have to follow the instructions laid down by the Company. That a foreman has to follow the contract between the Union, and have to follow the Wage Stabilization Act, and have to follow various Acts relative to working conditions?

A. Yes.

316 Mr. Citrin: No further questions.

Mr. Konopka: No questions.

Mr. Meder: No questions.

Trial Examiner Feiler: You are excused.

(Witness excused.)

NED ROBERTS,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Meder) Your full name?

A. Ned E. Roberts.

Q. And your address?

A. 4054 Bagley.

Q. You are general superintendent at the Edward G. Budd Manufacturing Company?

A. Yes.

Q. How long have you been general superintendent?

A. Seven years.

Q. Tell us whether or not the Trim Department falls under your jurisdiction?

A. It does.

Q. It has for how long?

A. Seven years.

Q. The Trim Department is located on one floor and a balcony, is it not

317 A. That is right.

Q. What is done up on the balcony?

A. The sewing.

Q. What is done on the main floor?

A. The sewing tables, the light assembly, and the light punch press work and some riveting.

Q. Now, who is in general charge of the Trim Department, and where does he stand in supervision with the Company?

A. The individual is Ed Farr, and his capacity is general foreman.

Q. Now, before Mr. Schieman was laid off, who was in charge of the sewing room in the Trim Department?

A. Harold Moss.

Q. Who was in charge of the assembly?

A. Moss was.

Q. The assembly?

A. Moss was. .

Q. Wasn't Schieman in charge of assembly?

Trial Examiner Feiler: When?

Mr. Meder: Before he was laid off.

The Witness: Before Schieman was laid off? Ed Farr was in charge of the Trim Department. It has always been that way.

Q. (By Mr. Meder) Did Mr. Schieman have any authority over Mr. Moss?

318 A. None at all. Never has.

Q. You are certain of that?

A. Definitely.

Q. Did Mr. Schieman have any authority over any of the men working for Mr. Moss?

A. Not a one.

Q. What portion of the Trim Department do you say was up on the balcony?

A. The sewing room.

Q. That is Mr. Moss's department?

A. That is right.

Q. The assembly was down on the floor?

A. That is right.

Q. What about this Mr. Spalding we have heard of here? Was Mr. Spalding a supervisor in the Trim Department at the time Mr. Schieman was laid off?

A. Spalding came in prior to my connection.

Q. Just answer the question. Was Mr. Spalding a supervisor in the Trim Department when Mr. Schieman was laid off?

A. No.

Q. What was the nature of his work?

A. Trimmer.

Q. He continued as a trimmer even after Schieman was laid off?

A. He did.

319 Mr. Meder: That is all.

Cross-Examination.

Q. (By Mr. Citrin) Who has charge of the Assembly Trim Shop Department at the present time?

A. A person by the name of Cadieux.

Q. Following the termination of employment of Fred Schieman on April 10, 1944, who had charge of assembly?

A. Temporarily we gave it to Moss.

Q. Then whom did you give it to?

A. We laid off temporarily the second shift and the foreman on the first shift overlapped on the assembly.

Q. How long did that condition exist?

A. About a month.

Q. Then what happened?

A. Due to an increase in orders, we had the second shift and Marshment went back on a little lighter basis, a lighter production basis than prior to Schieman's release, and for perhaps a month, we operated with one assistant foreman, that is, Moss carried both the assembly and the sewing room.

Q. Then what happened?

A. Then we put on Cadieux.

Q. Cadieux was put on where?

A. Put on assembly.

Q. All right. Now, Schieman was laid off on April 10, 1944, and I believe you testified, a few days after
320 that you cut out the second shift, and put Marshment in the assembly.

A. That is right.

Q. That condition then continued for about a month?

A. That is right.

Q. That would take us to approximately May 10, 1944.

A. It could be, within a week.

Q. Then Marshment went back on the second shift and Moss continued in charge of the sewing room and the assembly room for approximately a month?

A. That could be right.

Q. That would take us to approximately June 10, 1944, would that be correct?

A. That is right.

Q. And then Cadieux was put in as foreman in the assembly room?

A. Put in as a leader.

Q. Put in as a leader?

A. Yes.

Q. Who had charge of the assembly?

A. Moss.

Q. How long did that condition continue?

A. Sometime during the late part of the summer or early fall, and we decided to make a foreman out of Cadieux.

Q. Prior to the time that Schieman became foreman of the assembly room, who had charge of the assembly room?

321 A. Moss.

Q. Moss had charge of the assembly room?

A. Yes.

Q. Now, who put Schieman in charge of the assembly room?

A. I did.

Q. Why did you do that?

A. I wanted a foreman.

Q. Why did you want a foreman?

A. Because of increased production requirements, the job got so big that one man couldn't handle it.

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Q. Well, Schieman went in in charge of the assembly room, did he not? Did he do the job?

A. Well, the work was strange to him. There was much to be desired.

Q. Did you ever have complaints about his work?

A. I don't think I did to him. I did to his supervisor.

Q. Who was that?

A. Farr.

Q. You complained about Schieman's work? You were not satisfied with it?

A. That is right.

Q. How long was Schieman in charge of the assembly room?

A. A year or fourteen months.

Q. During that time you were dissatisfied with him?

A. We don't arbitrarily give up a man, it depends
322 on whether you can live with him.

Q. Would you say it took fourteen months to determine whether a man had the capacity to do a job?

A. He was a border line case.

Q. He was a foreman in the assembly room?

A. That is right.

Q. And Moss was assistant foreman?

A. Well, the word "foreman" and "assistant foreman" —pretty well come under one classification. It is a definition that is used to determine perhaps the difference between an hourly rated man and a salaried man.

Q. Who would you say was foreman? Harold Moss or Fred Schieman?

A. I think Moss was on an hourly rate.

Q. So it is your testimony that you were dissatisfied with Fred Schieman for fourteen months?

A. I didn't say that.

Q. What did you say?

A. I said he was a border line case, and I never was too happy with his efforts or his capacity on that particular job.

Mr. Citrin: No further questions.

Mr. Konopka: No questions.

Redirect Examination.

Q. (By Mr. Meder) I forgot. Was that second shift laid off about the time that Mr. Schieman was let out?

323 A. That is right, sir.

Q. Why was the second shift discharged?

A. Curtailment of production, reduction in schedule.

Trial Examiner Feiler: Who decided to let them go? Who made that decision?

The Witness: I decided to remove them in the Trim Department.

Trial Examiner Feiler: What was the reason?

The Witness: Reduction in force was the primary reason, the reduction in schedules.

Trial Examiner Feiler: You are excused.

(Witness excused.)

Mr. Meder: The Company rests.

FRED SCHIEMAN,

resumed the stand, was examined and testified further as follows:

Redirect Examination.

Q. (By Mr. Citrin) Mr. Schieman, how did you happen to go to work in the Trim Department?

A. They told me Mr. Roberts wanted to see me. He said I was recommended as the most capable man of taking the trim shop and Mr. Roberts said he had a man there, he didn't know the man at the time—

Q. (Interposing) Mr. Roberts said what now?

A. He had a man down there by the name of Jack

324 Spalding that didn't do very good. He said, "You go down there. There is a man in charge by the name of Mr. Marshment. You will be next in line."

After a while I showed him that the curtain line and everything was going right, and asked him about getting more money. I said, "You prove to me that this job will pay." That is as far as it went.

Q. At the time you went into the Trim Department, Harold Moss was there?

A. Harold Moss was there.

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Q. All right, did you have any authority over Harold Moss?

A I told him how the foreman wanted things done. Harold knew his job. I didn't have to bother.

Q. Did you ever give instructions to Harold Moss?

A. I certainly did.

Q. Did you ever give him instructions that he refused to follow?

A. No, he didn't.

Q. You were told by Mr. Roberts that you would be second in charge of the department?

A. Roberts told me that when I went in.

Q. Who was your immediate supervisor?

A. Mr. Farr.

Q. You felt you had charge of the department?

Mr. Meder: I ask that be stricken—how he felt.

325 I think you are after facts.

Trial Examiner Feiler: That is right. Sustained.

Q. (By Mr. Citrin): Outside of Mr. Farr and Mr. Roberts, did you have charge of the Trim Shop Department?

Mr. Meder: That is a conclusion.

Trial Examiner Feiler: He tried. Go ahead on that basis.

Q. (By Mr. Citrin) During the time that you were foreman of the Trim Shop Department, was Spalding working in the Trim Shop Department?

A. Spalding came around and stood around the line for a while and people told me, and the overseer told the steward, and the steward asked me to keep Spalding out of there, they wouldn't work, they refused to work.

Q. During the time you were foreman of the Trim Shop Department, did Mr. Roberts ever complain to you about the way the work was going?

A. He certainly did not. He came over and I had forty or fifty curtains over my number, and he says, "You are doing a good job."

Q. Was that the only conversation you ever had with Mr. Roberts while working in the Trim Shop Department?

A. I had a conversation with him the day I was laid off, the day he told me he was going to demote me.

Q. Outside of that?

A. Not that I recall.

326 Q. Now would you say it was necessary in order to run the Trim Shop Department, to have a trimmer in charge of the department?

A. I would not. There is no trimming there, just cutting.

Q. What would be done in the sewing room?

A. They sewed all the tops for the soft cab and sewed the curtains up that they shipped down, and had them assembled on the bottom floor, that was practically all they did.

Q. What was done in the cutting room?

A. They cut the cloth for the soft cab and the pattern. You run a cutter through the cloth. Anybody who had any strength could do it.

Q. Where would the material go from the cutting room?

A. Up to the sewing room.

Q. And there it was sewn?

A. Followed up and put in boxes and shot down the chute.

Q. What was done in the assembly room?

A. Made all the assembled belts for the safety belts for the Government and assembled the gun carriage pads.

Q. Riveted them?

A. Assembled the side curtains.

Q. Where were these belts that you were talking about?

A. They came from the sewing room.

Q. They came from the sewing room?

A. Yes.

327 Mr. Citrin: No further questions.

Cross-Examination.

Q. (By Mr. Meder) Your work at the Edward G. Budd Manufacturing Company had not concerned sewing room work, had it?

A. It never had.

Q. Your work had not concerned trimming experience, had it?

A. It never had.

Q. Your work at the Edward G. Budd Manufacturing Company had not contained cutting experience?

A. It never had.

Mr. Meder: That is all.

Trial Examiner Feiler. The witness is excused.

(Witness excused.)

ERNEST McNARY

resumed the stand, was examined and testified as follows:

Redirect Examination.

Q. (By Mr. Citrin) I believe you testified earlier this morning that you are a general foreman at the Edward G. Budd Manufacturing Company?

A. That is right.

Q. How many employees are there under you?

A. Right now, I would say between seventy-five and eighty.

Q. Are there any foremen under you?

A. Yes, sir; five.

Q. Five under you?

328 A. That is right.

Q. I believe you were present at the testimony concerning the up-grading of certain employees. Do you have the authority to up-grade employees?

A. Well, I don't know about the authority. We fill out the cards and turn them in, when a man is capable that we think he can do the job, we fill out the card and send it through the channels.

Q. You fill out the card. What does the card call for? What information?

A. His old rate, what rate you want to give him, and what operations he has.

Q. Now, you determine in your opinion that certain employees can do a job which calls for a different classification and a different rate. You make out this card then at that time?

A. That is correct.

Q. Do you tell the employee to go on the new job immediately?

A. No.

Q. What happens to this card, do you know?

A. It goes through the proper channels. If he gets his boost, then we would put him on his other job.

Q. When you say, "the proper channels," what do you mean by that?

A. It has to be okayed beyond us.

Q. Beyond you?

329 A. Yes.

Mr. Citrin: No further questions.

Cross-Examination.

Q. (By Mr. Konopka) Were you present when the derogatory remarks were made by Mr. Walton to Mr. Owens?

A. Yes, I remember that.

Trial Examiner Feiler: What was that derogatory expression?

Mr. Konopka: Was it as given by the previous witness?

The Witness: I don't know, word for word, but the statement was made.

Mr. Konopka: With reference to your membership in the Union?

The Witness: I think it was more or less to the three of us.

Mr. Konopka: With reference to your membership in the Union?

The Witness: Yes.

Recross-Examination.

Q. (By Mr. Meder) Isn't it a fact that you frequently placed these men on jobs first and then got approval later on?

A. We can't put a man on a job and guarantee him any higher rate of pay unless we have authority to do so.

Q. You get approval frequently after you have put them on the job?

A. Yes.

330 Mr. Meder: That is all.

Redirect Examination.

Q. (By Mr. Citrin) Before the man can get that higher rate, it has to be approved, does it not?

A. Yes.

Mr. Citrin: That is all.

Mr. Meder: Have you authority to special-rate an employee?

The Witness: Not to special-rate them. You mean for just a day at a time, oh, yes.

Mr. Meder: You do that constantly, don't you?

The Witness: Yes.

Mr. Meder: Don't you know, of your own knowledge, that other foremen do the same thing?

The Witness: Yes, that is right.

Mr. Meder: That is all.

Mr. Citrin: This special rate, how long is that rate in existence?

The Witness: If we need an arc welder or somebody and haven't got the man who can do the job, maybe on spot welding, we take a man off a job for the night and replace him, and put somebody on. Then we just upgrade them at the special rate for that particular night.

Mr. Citrin: That is just for the one day, and that is more or less in emergency conditions, is that right?

331 The Witness: That is right.

Mr. Meder: Sometimes, instead of a day, it goes two or three days, as much as a week?

The Witness: I have seen it happen.

Mr. Meder: Nobody approves it but yourself?

The Witness: Yes, that is right. Just the department head, our bosses, we tell them about it.

(Witness excused.)

Mr. Citrin: I move to have the Complaint conform with the proof in respect to any variances in time, not that I can recall any.

Trial Examiner Feiler: As to dates? Any objection?

Mr. Meder: As long as that motion does not add to any charges of unfair labor practices, there is no objection.

Trial Examiner Feiler: Just as to names, dates, and

places. That will be granted both as to the Complaint and the Answer.

Granted.

Mr. Meder: Are you through? Have you rested?

The Respondent moves to amend the Answer in accordance with the testimony given by Respondent's witnesses, with special reference, of course, to the testimony elicited by the counsel for the Board from Mr. Erwood.

Trial Examiner Feiler: I take it that in effect, you want to renew your two previous motions, one as to juris-
332 diction, and as to the amendments. I reserved decision previously. I will reserve decision on renewal.

Mr. Meder: Respondent moves to dismiss the case on jurisdictional grounds, the jurisdictional grounds being stated in the Answer as originally filed.

Trial Examiner Feiler: I will reserve decision on that also.

Mr. Meder: Respondent moves to dismiss the case on the merits.

Trial Examiner Feiler: Denied.

Mr. Citrin: In reference to Respondent's Motion to Amend its Answer, I would like to be heard on that motion. If Respondent's counsel would be more specific and state what it is in his Answer that he wants to amend—I don't know what he wants to amend.

Mr. Meder: I desire to amend the Answer in accordance with Mr. Erwood's testimony as brought out by counsel. He surely knows what he asked Mr. Erwood.

Mr. Citrin: You prepared the Answer. What is it you want to amend?

Trial Examiner Feiler: I think that is a matter for analysis of the transcript, perhaps, a comparison of this with the Answer. I think, as far as the legal problem is concerned, if you submit memoranda of any sort, or briefs, you might care to cover that point, but I think that is about all we can cover at this time. In other words,
333 if you get by the legal questions, then I would—I mean assuming if the Respondent is not entitled under any conditions to amend—then there is no question of going into the matter, if the Respondent has the right

to amend, then I suppose it would be up to me to decide evaluation.

Mr. Citrin: I would like to know just what specific information in the Answer Respondent wishes to amend.

Trial Examiner Feiler: I do not think the Respondent can be specific now. My recollection is that there has been testimony different from the Answer as to the termination of employment. I am just trying to remember. Can you be more specific?

Mr. Meder: I wouldn't want to be more specific now, without having a chance to read the transcript. I would like to have the right to file a brief, in which brief I will cover that subject if, after reviewing the transcript, I determine it is a matter I desire to amend. I would like to have exceptions to your rulings on each of those Motions. I understand I can have an automatic exception. I want the record to show I took exception.

Trial Examiner Feiler: Any further evidence, gentlemen?

Mr. Citrin: No further evidence.

Trial Examiner Feiler: I think we have covered motions. Are there any further motions? I think at this time
334 we might as well proceed to either oral argument, or perhaps, if the parties care to, a brief statement as to their positions. Do you care to make one?

Mr. Citrin: Yes, I would like to, Mr. Examiner.

I do not think there is any question in this case but that Respondent, by its officers and agents, did interrogate and question the supervisory employees as to whether or not they were members of the Foreman's Association; nor do I think there is any question but that certain supervisory employees were told to get out of the Union or they would be discharged.

Relative to the (8) (3) allegations which were made by the Board, I would like to point this out, that Mr. Erwood testified that he was interested in preventing the organization of supervisory employees, and that he felt that the best way to prevent such organization would be to have the officers of the Union resign and also to have the supervisory employees stop their activities in behalf of the Union.

One of the activities that he specifically mentioned was the solicitation of members.

Now, why were Owens and Schieman picked out to be discharged, when the Company allowed other members of its supervisory department, other supervisors to continue working? The only evidence in this case of Union activity, after the series of interviews conducted by Mr. Erwood and Mr. Walton and the rest of the Management, was that of Fred Schieman who asked Mr. Marshment whether
335 or not he wished to become a member of the Foreman's Association. Mr. Schieman further testified that he left application cards on the desk of Mr. Farr and Mr. Marshment. I think the time sequence and the persons involved there are very important. The employee that Mr. Schieman requested to become a member of the Union turns out to be the very employee who replaced Mr. Schieman in his job.

Mr. Schieman had done his work for fourteen months without any complaint, and no sooner does he join the Foreman's Association, and no sooner does he solicit, attempt to solicit the membership of Mr. Marshment, than suddenly the Company becomes dissatisfied with his work, and the Company suddenly decided that they have to put a professional trimmer on the job.

As far as the discharge of Oscar Owens is concerned, I don't feel there is any question but there is discrimination in regard to his term of employment. Only one employee in the entire plant, only one supervisor in the entire plant was discharged in April, 1944, and that employee, by coincidence, happens to have been the President of the Foreman's Association of America, Chapter 77. Further, Mr. Erwood testified that he did not believe that Mr. Owens had ceased his activities on behalf of the organization, and for that reason, the Company stepped aside from its usual practice, the practice constantly followed: that is, to permit supervisory employees to go work on production,
336 and that Mr. Schieman was not given that opportunity.

Assuming for the sake of argument that there was an actual reduction in force, and the reason he was given that

opportunity was because of his Union activities, that when the foremen got together and wanted to find out why it was that Mr. Owens' employment had been terminated, they were told that Owens was fired because he was a God damned liar.

The word "fired" was used by Mr. Walton, and he knew just what he meant when he said it. I think it is significant in this case that Mr. Walton did not appear as a witness, and I feel Mr. Walton's statement at the foremen's demonstration was the truth of the matter, that Owens was fired for one reason, and that reason was his Union activities.

I think, further, that the Respondent in stating in its Answer that all this occurred prior to the decision of the Board in the Soss Manufacturing case is very significant, inasmuch as the Company took the position prior to the Soss Manufacturing case that they could handle their supervisory employees in any manner they saw fit; that they could treat them with discourtesy, and if they belonged to a Union, they could discharge them. As far as any Union activities, and as far as supervisory employees engaging in Union activities were concerned, that was out, and the Company could take any position they desired.

337 Trial Examiner Feiler: So far as I understand, they still claim that.

Mr. Citrin: It could be. I am merely pointing out that the Answer states that all this occurred before the Soss Manufacturing Company case. I am sure that the Company would not have been so open and brazen about it had they anticipated the decision in the Soss Manufacturing case; but regardless of the decision in the Soss Manufacturing case, it is no excuse or defense to the Respondent.

Their supervisory employees at all times have had the right to join a labor organization, and no employee can be discharged or the status of an employee changed in any manner or fashion because of Union activities.

That is all.

Mr. Konopka: I believe Mr. Citrin covered everything. We have just one significant point that I think the Ex-

aminer ought to keep in mind. When Stanovich was present at this meeting of the foremen who were protesting the firing of Owens, and he asked Mr. Erwood, when Erwood said, "You are fired,"—he asked him to put the reason down on the firing slip, and Mr. Erwood said he would put on it what he pleased. In other words, he wouldn't consent to putting the real reason on the slip. That might be significant when we find out what is on Mr. Owens' slip.

I would just like to leave that one thought with the
338 Examiner.

Mr. Meder: I have no statement. What I want to do is file a brief after I get the transcript.

Trial Examiner Feiler: I can allow the parties seven days. That is sufficient.

Mr. Meder: I cannot possibly do it.

Trial Examiner Feiler: How long do you want?

Mr. Meder: Can you give us to the 4th? It would be mailed on the 2nd.

Trial Examiner Feiler: You want until June 2nd?

Mr. Meder: I will get it to you by the 4th. The 4th is on a Monday. I will mail it to Washington.

Trial Examiner Feiler: You want, in other words, to June 4th on the brief?

Mr. Meder: Yes.

Trial Examiner Feiler: I will allow one week, but I will communicate with the parties when I get back to Washington, as to the maximum time.

Mr. Meder: I cannot get it out in a week.

Trial Examiner Feiler: Is there anything further?

Upon the filing of the Intermediate Report of the Trial Examiner, the Board will enter an Order transferring the case to the Board and will serve copies of the Order upon each of the parties.

Within fifteen days of the entry of the Order transferring the case to the Board, any party may file with
339 the Board at Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of the State-

ment of Exceptions and Brief, the party filing the same shall serve a copy upon each of the parties and shall file a copy with the Regional Director.

No matter not included in the Statement of Exceptions may thereafter be objected to before the Board, and failure to file a Statement of Exceptions shall operate as a submission of the case before the Board on the record.

Should any party desire permission to argue orally before the Board, request thereof must be in writing to the Board within ten days after the date of the entry of the Order.

There being nothing further, the hearing is closed.

(Whereupon, at four-thirty o'clock p. m., Wednesday, May 23, 1945, the hearing in the above-entitled matter was closed.)

BOARD'S EXHIBIT NO. 6.

Constitution
of the
Foreman's Association of America
and
Laws Governing Chapters

(Emblem)

F A
Leadership of Fidelity
America

Honor – Truth – Justice

Adopted at Dearborn, Michigan
November 1941

Amended at Dearborn, Michigan
1943 Convention

(Union Label 22, Detroit)

Preamble.

From the early days of mass production by power machinery to the present decade the foreman was considered either as the channel through which the desires of ownership and management were conveyed to and made effective among the body of workers, or as the representative of ownership and management in the shop. Just before the opening of the present decade the organization of the body of workers into plant and industry-wide unions demanding the exclusive right of representation for collective bargaining purposes, dealing with employers or groups of employers in organizations that have existed for years, has greatly changed the real status of the foreman.

In the particulars of the day's production the foreman is yet the channel for making effective policies and directions of management as applied to production, but he is a part of neither organized ownership and management

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on the one hand nor of organized labor on the other hand. The foreman fits between two enormous powers, ownership and management on top and labor unions with enormous numbers on the bottom. The foreman has reason to feel that in the ceaseless struggle between ownership and wage labor the foreman will become a victim unless all foremen are organized to protect individuals and interests common and essential to the position of foremen in modern mass power production.

Constitution

of the

Foreman's Association of America

and

Laws Governing Chapters

Article I—Name.

This voluntary association of supervisory employees shall be known as Foreman's Association of America.

Article II—Purposes.

The purposes of the Association shall be to encourage social acquaintances among supervisory employees, to confer and act upon measures for the protection and advancement of the economic welfare of supervisory employees through collective bargaining, and to encourage study, conference, and wider learning among supervisory employees to the end that they may improve in the supervision of men and women in industry.

Article III—Constitution.

This Constitution shall be the Supreme Law of the Foreman's Association of America.

* * * * * * *

Article V—Membership.

Section 1. Membership in the Association may be obtained and held only through membership in a Chapter thereof.

Board's Exhibit No. 6

Section 2. Any employee of good moral character, whose duties require the supervision of other employees, or who directs work, who may or may not supervise other employees, and who is not a member of any other organization recognized by his employer as representing him in collective bargaining, may become a member of the Association after having been employed as a supervisory employee for a period of not less than thirty (30) days prior to the filing of application for membership, and provided that such application to a Chapter of the Association is accompanied by a membership fee.

Section 3. No supervisory employee or individual acting as negotiator in formulating employer-policy may become a member of the Foreman's Association of America.

Section 4. No person whose application for membership in the Association has been declined shall be eligible to apply for membership in any other Chapter of the Association for a period of ninety (90) days following such declination.

Section 5. No person shall be eligible for admittance to membership in more than one Chapter of the Association at the same time, but membership herein may be transferred from one Chapter of the Association to another for good cause.

Section 6. All members of the Chapters of the Association thereby become and are members of this Association.

Section 7. No person shall at any time under any circumstances be made an honorary member or Officer of the Association.

Section 8. A withdrawal card may be issued to any member whose status has been changed to disqualify him from membership except in the case of suspension or expulsion.

Section 9. No person shall be disqualified for membership on account of race, religion, nationality, sex or political views or opinions.

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Board's Exhibit No. 6

Article XXI—Charges and Trials of Officers and Members.

Section 1. Any elected or appointed Officer of the Association may be removed from office for any violation of this Constitution or of the By-Laws of the Chapter of which he is an Officer; or because of the commission of any act which may be deemed to impair the usefulness of the Association or which is unbecoming to the dignity of his office.

Section 2. All charges must be in writing and signed by the accuser and filed with the National Secretary-Treasurer who shall refer such charges to the appropriate Trial Body and shall give notice in writing by registered mail of such charges to the accuser and the defendant and of the time and place of the hearing, which hearing shall be held within one month after the receipt of such charges.

Section 3. No Officer or member shall be fined, suspended, or expelled without proper notice of charges and a fair opportunity to be heard in defense; but an Officer or member under charges under Section 1 of this Article may be suspended by the National President pending trial.

Section 4. Charges made by a member of a Chapter against another member of the same Chapter shall be tried by the Chapter Executive Board.

Section 5. Charges made by a member of a Chapter against an Officer of the same Chapter shall be tried by the National Executive Board.

Section 6. Charges made by a member of one Chapter against a member of another Chapter shall be tried by the Executive Board of the Chapter of which the defendant is a member.

Section 7. Charges made by a member of a Chapter against an Officer of another Chapter shall be tried by the National Executive Board.

Section 8. Charges against National Officers or members of the National Executive Board by a National Officer, Chapter Officer, or member of the Association shall be

tried by a Trial Committee consisting of twelve (12) members elected by the Delegates to the Convention.

Section 9. In the event any member of the Trial Committee is a member of a Chapter of which the accuser or the defendant is also a member the Committee member shall be disqualified from serving on the Trial Committee in the instant case.

Section 10. By not less than a two-thirds (⅔) vote of the members of the Trial Committee a National Officer or National Executive Board Member may be reprimanded, fined, suspended, or expelled, if found to be guilty of the charges filed against him.

Section 11. At no time shall the Trial Committee hear charges with less than nine (9) members assembled.

Section 12. If the defendant shall fail to appear at the time and place designated for the trial without presenting a sufficient cause for his absence the Trial Body shall proceed to take testimony and make decisions in the same manner as if the defendant were present.

Section 13. Any member or Officer involved in a trial either as an accuser or defendant shall have the right either in person or through a representative (who shall be a member in good standing, but not an Officer or member of the Trial Committee) to question all witnesses and to present evidence bearing on the case.

Section 14. Any Officer or member involved in any case either as an accuser or a defendant shall be disqualified from sitting on the Trial Body in his own case.

Section 15. In cases tried by the Trial Committee the Committee or person authorized by it shall have the power to direct the production of books or papers by any subordinate body or any Officer thereof, and shall likewise have the power to direct any member to appear before them to give testimony in connection with any pending charge or investigation.

Section 16. If any member or Officer shall knowingly prefer false charges against any other member or Officer

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the Association the accused may be placed on trial for aving brought such false charges and such trial shall be onducted in the same manner and before the same Trial ody as the trial or charges made by the accuser.

Article XII—Appeals.

Section 1. All Subordinate Bodies of the Association nd members thereof shall be entitled to the right of ppeal.

Section 2. If a Subordinate Body or member of the ssociation wishes to appeal from any action, decision, r penalty, the appeal shall be to the National Executive oard, and if it is desired to appeal the decision of the ational Executive Board an appeal may be taken there-om to the next Convention. The decision of the Conven-on shall be final. In all cases, however, the decision of he lower tribunal must be complied with before the right o appeal can be accepted by the next tribunal in author-y and shall remain in effect until reversed or modified.

Section 3. Any member of the Association wishing to ppeal from the action, decision or penalty of a Subordi-ate Body shall do so in writing within thirty (30) days fter the aforesaid action, decision, or penalty, and he ust notify said Subordinate Body of his intention in riting. It shall be the duty of the Subordinate Body to orward to the National Secretary-Treasurer a complete ritten statement of the matter in issue.

Section 4. Any Subordinate Body or member of the ssociation wishing to appeal from any action, decision, r penalty of the National Executive Board to the Con-ention, must serve notice of appeal upon and file a writ-en statement of the appeal with the National Secretary-reasurer within thirty (30) days after such decision is endered.

Section 5. In no case shall a Subordinate Body or mem-er of the Association appeal to a civil court for redress ntil all rights of appeal under the laws of this Constitu-ion have been exhausted. Any violation of this Section

shall be cause for suspension, or expulsion, or for revocation of Charter, by a two-thirds (⅔) majority vote of the National Executive Board.

Section 6. Appeals from the decisions of the Trial Committee may be made only to the Convention as provided in Article XXI.

Section 7. The National President may extend the time for filing any appeal under Article XXI and Article XXII, if in his opinion justice will be served thereby.

Article XXIII—Contracts and Negotiations.

Section 1. It shall be the established policy of the Association to recognize the spirit, the intent, and the terms of all contractual relations developed and existing between Chapters and Employers. Each Chapter shall be required to carry out the provisions of any Agreements negotiated.

Section 2. Negotiations between Chapters and the Employers shall be conducted by a Committee selected by the Chapter which shall participate in all conferences and negotiations. A National Officer or Representative may participate and act as a member of the Chapter Committee during negotiations. Copies of any Agreements arrived at between Chapters and the Employers shall be filed with the National Secretary-Treasurer immediately following the affixing of signatures to the Agreement and prior to the ratification of the Agreement by the membership of the Association. All terms of any Agreement must comply with the laws of this Constitution and the By-Laws of the Chapter.

Section 3. The National Executive Board shall be empowered to accept or reject any signed Agreement prior to the ratification of the membership of the Association and shall notify the Chapter President of their acceptance or rejection, and if rejected the reasons therefor.

Section 4. No Chapter Officer, Chapter Representative, or member of the Association shall have authority to negotiate the terms of an Agreement with any Employer without first obtaining the approval of the Chapter Executive Board.

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Board's Exhibit No. 6

Section 5. No National Officer, National Executive Board Member, or National Representative shall have authority to negotiate the terms of an Agreement with any Employer without first obtaining the approval of the National Executive Board.

Section 6. In the event the National President prior to the approval of the National Executive Board recommends approval of any Agreement between a Chapter and an Employer the Agreement shall become operative until final action is taken by the National Executive Board.

Section 7. A general Chapter meeting of the members of the Association shall be the highest authority for handling problems within the Chapter.

Section 8. A general meeting of the members of the Association of all Chapters of the Association shall be the highest authority for handling problems within the Association between conventions.

Section 9. Chapter meetings and National meetings shall be noticed by written communication to every member of the Association.

Section 10. All decision of the members of the Association at Chapter meetings must be in conformity with the By-Laws of the Chapter and this Constitution.

Section 11. Any decisions of a general meeting of the members of the Association of all Chapters must be in conformity with the provisions of this Constitution unless altered, amended, or modified under the provisions of Article XXVIII.

Section 12. The National Executive Board shall protect all Chapters who have succeeded in establishing higher wages and favorable working conditions, and who have superior Agreements so that no infringement may be committed by other Chapters who may have inferior Agreements.

Board's Exhibit No. 6

Article XXIV—Laws Governing Chapters and Regional Organizations.

Section 1. All Subordinate Bodies shall submit any and all laws governing said Subordinate Bodies to the National Secretary-Treasurer for approval by the National Executive Board.

Section 2. Each Subordinate Body shall strive to obtain the objectives set forth in this Constitution and maintain free relations with other organizations.

Section 3. Each Chapter shall have the following Officers: President, Vice-President or Vice-Presidents, Recording Secretary, Financial Secretary, Treasurer, three Trustees, Sergeant-at-Arms, and an Executive Board consisting of not less than five (5) members.

Section 4. All Chapter Officers shall be elected by secret ballot, and the election shall take place within thirty (30) days following the Convention, and installation of Officers shall take place at the next regular Chapter meeting, following the election unless otherwise authorized by the National Executive Board.

Section 5. After the deadline of accepting nominations set by the Chapter Election Committee no election of so-called "sticker" or "write-in" candidate shall be considered legal.

Section 6. The term of office for all Chapter Officers shall be one year with the exception of the Trustees who shall serve for three years each. In the original election of Trustees one shall be elected for one year, one for two years, and one for three years, and at each subsequent election as the vacancies occur each Trustee shall be elected for a three-year term.

Section 7. No member of the Association shall be eligible for election as an Officer until he has been a member in continuous good standing in the Chapter for one year immediately prior to the nomination except in the case of Chapters organized for a period less than one year at the first election.

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Section 8. At the discretion of the Chapter the Offices of the Financial Secretary, Recording Secretary and Treasurer may be combined.

Section 9. No member of the Association may hold two (2) paid full-time jobs or Offices in the Association at the same time.

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BOARD'S EXHIBIT NO. 7.

Constitution

of the

Foreman's Association of America

and

Laws Governing Chapters

(Emblem)

F A

Leadership of Fidelity

America

Honor – Truth – Justice

Originally
Adopted at Dearborn, Michigan
November, 1941

Amended at Detroit, Michigan
1944 Convention

Preamble.

From the early days of mass production by power machinery to the present decade the foreman was considered either as the channel through which the desires

of ownership and management were conveyed to and made effective among the body of workers, or as the representative of ownership and management in the shop. Just before the opening of the present decade the organization of the body of workers into plant and industry-wide unions demanding the exclusive right of representation for collective bargaining purposes, dealing with employers or groups of employers in organizations that have existed for years, has greatly changed the real status of the foreman.

In the particulars of the day's production the foreman is yet the channel for making effective policies and directions of management as applied to production, but he is a part of neither organized ownership and management on the one hand nor of organized labor on the other hand. The foreman fits between two enormous powers, ownership and management on top and labor unions with enormous numbers on the bottom. The foreman has reason to feel that in the ceaseless struggle between ownership and wage labor the foreman will become a victim unless all foremen are organized to protect individuals and interests common and essential to the position of foremen in modern mass power production.

Constitution
of the
Foreman's Association of America
and
Laws Governing Chapters

Article I—Name.

This voluntary association of supervisory employees shall be known as Foreman's Association of America.

Article II—Purposes.

The purposes of the Association shall be to encourage social acquaintances among supervisory employees, to confer and act upon measures for the protection and advancement of the economic welfare of supervisory employees through collective bargaining, and to encourage study,

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conference, and wider learning among supervisory employees to the end that they may improve in the supervision of men and women in industry.

Article III—Constitution.

The Constitution shall be the Supreme Law of the Foreman's Association of America.

Article IV—Affiliation.

The Foreman's Association of America shall not become a subordinate affiliate of any labor organization, and shall not become an affiliate of any manufacturers' association.

* * * * * * *

Article VI—Membership.

Section 1. Membership in the Association may be obtained and held only through membership in a Chapter thereof.

Section 2. Any employee of good moral character, whose duties require the supervision of other employees, or who directs work, who may or may not supervise other employees, and who is not a member of any other organization recognized by his employer as representing him in collective bargaining, may become a member of the Association after having been employed as a supervisory employee for a period of not less than thirty (30) days prior to the filing of application for membership, and provided that such application to a Chapter of the Association is accompanied by a membership fee.

Section 3. No supervisory employee or individual acting as negotiator in formulating employer-policy may become a member of the Foreman's Association of America.

Section 4. No person whose application for membership in the Association has been declined shall be eligible to apply for membership in any other Chapter of the Association for a period of ninety (90) days following such declination.

Board's Exhibit No. 7

Section 5. No person shall be eligible for admittance to membership in more than one Chapter of the Association at the same time, but membership herein may be transferred from one Chapter of the Association to another for good cause.

Section 6. All members of the Chapters of the Association thereby become and are members of the Association.

Section 7. No person shall at any time under any circumstances be made an honorary member or Officer of the Association.

Section 8. A withdrawal card may be issued to any member whose status has been changed to disqualify him from membership except in the case of suspension or expulsion.

Section 9. No person shall be disqualified for membership on account of race, religion, nationality, sex or political views or opinions.

Section 10. Any member in good standing at the time of entering the armed forces shall be considered in good standing during interim of his absence, and upon presentation of an honorable discharge, or its equivalent, shall, upon payment of the current month's dues, be considered an active member of his Chapter, provided application is made within one year of the date of such discharge.

Section 11. Any member elected or appointed to a full time position in the Association shall retain membership in his original Chapter during the tenure of such office.

Section 12. The original application for membership signed by each member shall be forwarded to and be retained by the national office for its record. An official receipt shall be given to each member for all monies paid.

Section 13. Any Chapter suspending or expelling any member for cause shall notify the National Secretary-Treasurer, and the latter shall notify all Chapters forthwith. A person who has been suspended or expelled by any Chapter shall not be eligible for membership in any Chapter until all claims or charges against such person

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have been satisfactorily settled with the Chapter suspending or expelling, and written notice to this effect furnished the Chapter to which such person seeks admission or readmission.

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Article XXIV—Contracts and Negotiations.

Section 1. It shall be the established policy of the Association to recognize the spirit, the intent, and the terms of all contractual relations developed and existing between Chapters and Employers. Each Chapter shall be required to carry out the provisions of any Agreements negotiated.

Section 2. Negotiations between Chapters and the Employers shall be conducted by a Committee selected by the Chapter which shall participate in all conferences and negotiations. A National Officer or Representative may participate and act as a member of the Chapter Committee during negotiations. Copies of any Agreements arrived at between Chapters and the Employers shall be filed with the National Secretary-Treasurer immediately following the affixing of signatures to the Agreement and prior to the ratification of the Agreement by the membership of the Association. All terms of any Agreement must comply with the laws of this Constitution and the By-Laws of the Chapter.

Section 3. The National Executive Board shall be empowered to accept or reject any signed Agreement prior to the ratification of the membership of the Association and shall notify the Chapter President of their acceptance or rejection, and if rejected the reasons therefor.

Section 4. No Chapter Officer, Chapter Representative, or member of the Association shall have authority to negotiate the terms of an Agreement with any Employer without first obtaining the approval of the Chapter Executive Board.

Section 5. No National Officer, National Executive Board Member, or National Representative shall have authority to negotiate the terms of an Agreement with any Employer without first obtaining the approval of the National Executive Board.

Board's Exhibit No. 7

Section 6. In the event the National President prior to the approval of the National Executive Board recommends approval of any Agreement between a Chapter and an Employer the Agreement shall become operative until final action is taken by the National Executive Board.

Section 7. A general Chapter meeting of the members of the Association shall be the highest authority for handling problems within the Chapter.

Section 8. A general meeting of the members of the Association of all Chapters of the Association shall be the highest authority for handling problems within the Association between Conventions.

Section 9. National membership meetings shall be noticed by written communication to every member of the Association.

Section 10. All decisions of the members of the Association at Chapter meetings must be in conformity with the By-Laws of the Chapter and this Constitution.

Section 11. Any decisions of a general meeting of the members of the Association of all Chapters must be in conformity with the provisions of this Constitution unless altered, amended, or modified under the provisions of Article XXIX.

Section 12. The National Executive Board shall protect all Chapters who have succeeded in establishing higher wages and favorable working conditions, and who have superior Agreements so that no infringement may be committed by other Chapters who may have inferior Agreements.

* * * * * * *

Article XXVIII—Strikes.

Section 1. The Chapter Executive Board when requesting that a thirty (30) day intent-to-strike notice be filed under the War Labor Disputes Act must furnish a detailed report of the request to the National Executive Board.

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Board's Exhibit No. 7

Section 2. If the National Executive Board approves of a Chapter's Executive Board request, a chapter membership meeting must be held after having properly notified all members of said meeting, and a vote taken to determine the desires of the membership. The members of this Chapter must be in good standing to vote on the question.

Section 3. If approved by the National Executive Board and the membership of a Chapter, the strike notice shall be filed by the National President.

Section 4. Copies of notice of any meetings that shall be held for the purpose of determining the wishes of the membership shall be forwarded to the National Secretary-Treasurer at the same time.

Section 5. Upon receipt of such notice, the National Secretary-Treasurer shall immediately notify the National President, who shall convene the National Executive Board for the purpose of making the necessary arrangements.

Section 6. Any strike action by the members of any chapter of the Association shall be deemed to be unauthorized by the National Executive Board unless approved as herein provided.

. . . . . .

RESPONDENT'S EXHIBIT NO. 1.

(Emblem)

Agreement

Between

Budd Wheel Co.

Detroit

Edw. G. Budd Mfg. Co.

Detroit Division

Budd Induction Heating, Inc.

and

Local 306

UAW-CIO

(Union Label 3, Detroit)

Agreement.

This Agreement, made and concluded at Detroit, Wayne County, Michigan, this 18th day of March, 1944, by and between the Edward G. Budd Manufacturing Company, Detroit Division, the Budd Wheel Company, Detroit, and the Budd Induction Heating, Inc., Detroit, duly organized corporations doing business in the City of Detroit, Michigan, parties of the first part, hereinafter called the "Companies," and the employees of said Companies, both male and female, by their representative, the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the C.I.O., Local 306 thereof, parties of the second part, hereinafter called the "Union."

Witnesseth:

That said parties of the first part, in consideration of the promises and agreement of the parties of the second part, herein set forth, through their representative, considering their mutual interests and their desire to stabilize employment, eliminate strikes, boycotts, lockouts, and discontinuance of work, and to secure a closer cooperation between the Companies and the employees, promise and agree that:

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Respondent's Exhibit No. 1

Article I.

Recognition.

Section 1. The Edward G. Budd Manufacturing Company, Detroit Division, the Budd Wheel Company, Detroit, and the Budd Induction Heating, Inc., Detroit, hereby recognize the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the C.I.O., Local 306, as the sole and exclusive bargaining agency for all employees excepting foremen, assistant foremen, timekeepers, time study men, watchmen and confidential employees, and will negotiate with the accredited members thereof, chosen by its members for the purpose of determining any disputes which may arise concerning wage rates, working conditions, hours, dismissals, or discriminations, and will negotiate any grievances or complaints which may arise in the future or which may have arisen since December 31, 1943. Grievances heretofore disposed of may be reopened upon the submission of new evidence.

Article II.

Representation.

Section 2. The employees shall be represented by an Executive Shop Committee of not more than seven (7) members including the chairman, who shall be elected in any manner determined by the employees. The Executive Shop Committee may have a Secretary. Three (3) members of the Executive Shop Committee shall be elected from the Manufacturing Division and three (3) from the Wheel Division. The Chairman and the Secretary shall be elected at large. All members of the Executive Shop Committee, including the Chairman, must have been in the continuous employ of one of the three Companies at least one year before taking office.

Section 3. The Companies shall negotiate with the Executive Shop Committee as the representative of the employees, and either party shall have the right to call in International Representatives to assist in finally settling a grievance.

Respondent's Exhibit No. 1

Section 4. (a) There shall be chief stewards as specified in Appendix A who shall hold top seniority on their shifts.

(b) Should additional representation be required to facilitate the handling of grievances, the election of such representatives shall not be held until the approval of the Management and the Executive Shop Committee has been secured for such additional representation.

(c) Each chief steward, whether male or female, as well as any additional representatives of the Union, must have been in the employ of one of the three Companies at least six (6) months before taking office, except where the same is impractical.

Section 5. The Companies agree that there shall be no discrimination against any employee on account of service on the Executive Shop Committee or stewardship or membership in the Union.

Article III.

Grievance Procedure.

Section 6. It is mutually agreed and understood that should any difference arise between the Companies and any of their employees as to the meaning and application of any of the provisions of this agreement, or should any local trouble of any kind arise in the plants, there shall be no interruption of operation by any employee or group of employees on account of such difference or for any other reason whatsoever until an earnest effort is first made to settle such differences immediately by the following grievance procedure.

Section 7. No grievance or complaint of any employee or group will be considered by the Management or the plant committee, unless the procedure hereinafter provided is followed.

Section 8. In settling grievances the following procedure shall be followed:

(a) Between an employee or his chief steward and the foreman in his department.

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(b) In case the grievance cannot be settled between the employee or his chief steward and his foreman, the chief steward of the department shall present the grievance in writing to the foreman of the department on a form provided for that purpose, and it shall be mandatory for the foreman of the department to acknowledge the receipt of the complaint in writing and enter his disposition thereon.

(c) After a written grievance has been presented to the foreman by the chief steward, and if the chief steward and the foreman cannot agree, the chief steward shall then obtain the presence of a plant committeeman in his department to assist in settling the complaint. The plant committeeman, if he is unable to settle the grievance with the parties concerned, shall request an appointment with the superintendent to adjust the grievance.

(d) In the event the procedure outlined above does not result in a satisfactory adjustment, the case shall be negotiated by the members of the plant committee and the designated representatives of the Companies

(e) If a satisfactory adjustment is then made, the decision shall be noted on the form by the Management Representatives and the plant committeemen who negotiated the grievance.

(f) Cases which cannot be satisfactorily settled as hereinbefore provided shall be reviewed jointly by (1) Representative of the Companies and (2) the Executive Shop Committee together with an International Representative. The Companies shall have the right to have present an officer of the International Union if they choose.

(g) In case of disagreement between an employee and his foreman as to practicability and proper ability to perform the services required, the matter shall be subject to negotiation between the Company and the Executive Shop Committee.

(h) Regular meetings between the Management Representatives and the Executive Shop Committee shall be held weekly at a time mutually agreed upon. Wherever practical twenty-four (24) hours prior to such meetings

with Management, the Executive Shop Committee shall furnish the Personnel Director with a list of the complaints in writing, giving full details, and requesting a hearing thereon.

(i) When it is necessary for a chief steward or a committeeman to leave his department, he shall notify his foreman of his desire to do so, and shall not leave until a substitute worker has been provided in his place.

Section 9. The committee of each plant shall confine its activities to its own plant excepting that the committee of one plant shall have the right to contact the Personnel Director to obtain the presence of the committee of the other plant to jointly view any condition causing a grievance or dispute.

Section 10. The Companies agree that neither they nor any of their supervisors shall unduly delay the settling of any grievance.

Article IV.

Seniority.

Section 11. (a) Employees hired after the date of this agreement shall be regarded as probationary employees until they have worked for the same Company in the same department for sixty (60) accumulative days during any twelve (12) months' period subsequent to the date hereof. While there shall be no responsibility for the reemployment of probationary employees if they are discharged during the probationary period, any employee shall have the right of review upon his complaint of discrimination. This section shall not affect the established seniority of any employees in any of the Companies.

(b) Any employee laid off during the probationary period shall have priority rights for the purpose of reemployment within his department or occupational group within his department over any newly hired employee, provided he is reemployed by either of the Companies within twelve (12) months of his layoff and reports to the Employment Department for work within twenty-four (24) hours of such notification.

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Section 12. After sixty (60) days' accumulated employment within a twelve (12) months' period as provided in Section 11 of this Article, the names of such employees shall be placed on the seniority lists for their respective departments or occupational groups, as of the first date of hiring during such twelve (12) months' period.

Section 13. Other than as herein specified, layoffs and hirings shall be by occupational and departmental groups in accordance with the seniority herein specified.

Section 14. An employee shall lose his seniority for the following reasons only:

(a) If he shall quit.

(b) If he shall be discharged for just cause.

(c) If he shall not have worked for the Companies for a period of one year.

Section 15. (a) An employee shall forfeit his seniority rights to the employee next on the seniority list until another job is available if he fails to report for work within three (3) working days when called by one of the Companies. However, if his failure to report for work is due to sickness, accident or other cause beyond his control, he shall not forfeit his seniority rights, as mentioned in the preceding sentence, if he notifies the Employment Department of the Companies and Local 306 within three (3) working days after his absence starts and if upon his recovery he reports for work to the Employment Department of the Companies.

(b) Employees shall notify the Employment Department of the Companies and the Union within three (3) working days of any change of address; such notice to be given by United States registered mail or in person, and they shall receive a receipt from the Companies that such notice has been given. The Companies shall be entitled to rely upon the address shown upon their records in the Employment Office.

(c) If an employee violates either or both of the preceding paragraphs the second time in a twelve (12) months' period, it shall be assumed that he has quit.

Respondent's Exhibit No. 1

Section 16. There shall be only one seniority list for each department of each Company for both males and females. Females shall receive the same rate of pay as males in the same classification. This section shall be in effect for the duration of the war.

Section 17. Seniority in the Inspection Department (No. 67) shall be by divisions with the following exceptions:

(a) A non-productive inspector may work on production inspection in his division only when his seniority in comparison to production inspectors permits him to do so.

(b) In an emergency in any division, inspectors with previous experience on the job that is open may be borrowed according to their seniority for a period not to exceed three (3) days to fill the vacancy, after which they will be returned to their original division; but, if retained, shall hold seniority rights in the new division.

(c) In the event production is curtailed in any department within a division which necessitates a layoff, the inspectors affected shall replace junior inspectors on the other jobs in that division on the next working day.

(d) In the event of a layoff in any division the inspectors affected shall replace junior inspectors in another division within five (5) working days.

(e) At all times inspectors laid off in Department No. 67 shall be the junior inspectors. In recalling inspectors the reverse shall be the rule and recalled inspectors shall assume their seniority in the division to which they are recalled. No inspector will be moved back and forth from division to division except as mentioned above.

(f) In an emergency and when inspectors are available within the division who are not working, every effort will be made to secure senior inspectors from that division to fill the job. If senior inspectors are not available for the job, the next senior inspector or inspectors in line will be contacted to fill the job.

Section 18. Seniority in the metal division of the Edward G. Budd Manufacturing Company will be governed by the following provisions:

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Jobs with a similarity of work and operations will be grouped in units mutually agreed upon by the Executive Shop Committee and the Management.

(a) In the event production is curtailed in any department which necessitates a layoff, the employees affected shall replace junior employees on the other jobs in that unit within five (5) working days.

(b) When jobs are eliminated or discontinued or when operations are eliminated the employees affected shall replace junior employees in that or other units within two weeks.

(c) The grouping of units in the Metal Division of the Edward G. Budd Manufacturing Company may be changed by mutual agreement of the Executive Shop Committee and the Company should additional jobs necessitate such a change.

(d) At all times the employees laid off shall be the junior employees in their classification or occupational groups in the Metal Division. When employees are recalled, the reverse of this procedure will take place.

Transfers.

Section 19. Employees may be transferred from one department to another under the following conditions:

(a) Provided that all employees with seniority are back at work in the department to which another employee desires to transfer.

(b) An employee with seniority so transferred shall be senior to any probationary employee working in the department.

(c) Employees transferred from one department to another shall put in at least sixty (60) days' continuous service before they have any claim to seniority in their new department.

(d) Provided, further, that at the end of one year such employees shall decide if they wish to remain in the department to which they have been transferred; and, if

so, shall carry with them their full seniority rights from their previous department.

(e) If employees choose to go back to their previous department or Company, they shall retain full seniority rights therein.

(f) No employee shall be permanently transferred without his consent, provided, however, the Companies and the Union will segregate the classifications and jobs available to men and women or both respectively, and in cases where jobs or classifications are classed as available to women, men may be transferred from such jobs to other work with at least equal pay when such transfer is necessary in the placing of female employees. Such listing of jobs and classifications shall be revised from time to time as efficient operation may require. (Ordered by the Detroit Regional War Labor Board September 23, 1943.)

(g) An employee with seniority heretofore or hereafter transferred from civilian to defense work within a Company hereto or rehired by the Companies hereto shall, upon the curtailment or discontinuance of the work to which he was transferred or rehired, go back to the department or Company from which he came with accumulated seniority. If not practical, the placing of such employee shall be negotiated by the Executive Shop Committee and the Company.

Section 20. Where employees in any department are laid off permanently or indefinitely for any reason, the placing of such employees in other departments in either plant and their seniority rights will be negotiated by the Management and the Executive Shop Committee.

Section 21. When employees are transferred from a productive or non-productive department to a skilled department or a skilled occupational group within their department, they may remain in the new department or occupational group, holding only the seniority acquired therein, or transfer back into their previous department, holding their seniority from date of hiring. Skilled groups will be determined by the Executive Shop Committee and the Management. In the event they revert to their original

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department, there shall be no obligation on the part of the Companies to return them to the skilled department.

Section 22. In the event of a department or job being transferred from one part of the plant to another, the employees working on the transferred job shall have the privilege of being transferred with the job and retaining full seniority rights.

Section 23. An employee rehired by one Company from another, except as specified in paragraph (g) of Section 17, will hold seniority in the Company from which he came; provided, however, that such employee, at the end of one year from the date of rehire (1) shall elect to return to the plant from which he came with the seniority of that plant plus the seniority acquired in the plant in which he was rehired, or (2) shall elect to remain in the plant to which he was rehired, in which case he shall have only the seniority acquired from the new date of hiring.

Section 24. When new jobs are created or vacancies occur within a department, the oldest employees in point of service in that department shall be given preference in filling such new jobs or vacancies as may be desirable to them as far as practical and consistent with proper ability to perform the services required. In the event of disagreement between the Union and the Company as to the application of this section, employees shall be given up to a three-day trial on the job in question. At the end of such trial, the employees must do the work required on the job.

Section 25. The members of the Executive Shop Committee shall have plant-wide seniority in their respective plants provided they are capable of doing the work available.

Section 26. Employees working in non-productive departments may apply to the employment office for transfer to productive jobs. The Company will maintain a file of such applicants and as productive jobs are open will give preference to such applicants over untrained strangers of no greater or superior qualifications. (Ordered by Detroit War Labor Board, September 23, 1943.)

Respondent's Exhibit No. 1

Leaves of Absence.

Section 27. (a) Any employee shall be granted a written leave of absence for good cause with the consent of the Management and the Executive Shop Committee without prejudice to seniority or other rights. Additional time may be granted in writing at the discretion of the Management and the Executive Shop Committee.

(b) Any employee elected or appointed to office in the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, or Local 306 thereof, shall retain accumulative seniority rights at the termination of his or her term of office.

(c) Any employee on the seniority list who is called into active service, whether under the National Guard Act or under the Selective Service Act (including rejections) or otherwise, or who volunteers in the armed forces of the United States including the Merchant Marine, will accumulate seniority during such period of service and, upon the termination of such service, will be reemployed provided (1) he furnishes a certificate of service; (2) he is physically able to perform the duties of his job; and, (3) he reports for work within forty (40) days after he is relieved from duty.

Layoffs and Rehires.

Section 28. When layoffs become necessary in a department, the following procedure shall be strictly observed:

(a) Probationary employees shall be laid off first.

(b) Employees will then be laid off according to their seniority.

(c) When employees are sent home for lack of work or other cause beyond the Companies' control, except for sickness or injury, the foreman must as far as possible release the junior employees first. When due to an emergency it is necessary to start up a job on which employees have been sent home, the foreman shall notify the chief steward before placing junior men on the job.

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(d) When an employee reports for work and has not been notified not to report and no work is forthcoming in the Company by which he is employed, he shall receive not less than three (3) hours' pay at his prevailing hourly rate, except in case of labor disputes or other conditions beyond the control of the Company. (Ordered by the Detroit Regional War Labor Board September 23, 1943.)

Section 29. Any employee who is recalled to work and reports as instructed shall be given at least three (3) days' work.

Section 30. (a) When foremen and assistant foremen cease to act as supervisors and become production workers, they shall have seniority only from their original date of hiring. All such foremen or assistant foremen shall act as such during the entire workweek, and no such foreman or assistant foreman shall perform the work of any employee who has been sent home due to lack of work during any workweek, including Saturdays and Sundays, except in emergencies, and for relief and instruction purposes.

(b) Set-up men have no authority to send employees home. (Ordered by the Detroit Regional War Labor Board September 23, 1943.)

(c) No chief steward or member of the Executive Shop Committee shall be made a foreman during his term of office without the written consent of the Executive Board of Local 306.

Article V.

Hours and Wages.

Section 31. The regular working hours shall be eight (8) hours per day and forty (40) or forty-eight (48) hours per week depending upon Federal statutes, directives, rules and regulations.

Section 32. No workweek shall be deemed to start on Sunday except that the workweek of the third shift may start at 11:00 P. M. Sunday; and, if so, shall work at straight time for the first eight (8) hours.

Respondent's Exhibit No. 1

Section 33. There shall be a specified starting and quitting time. The starting and quitting time may be changed where necessary to maintain continuity of employment by agreement of the Companies and one or more members of the Executive Shop Committee.

Section 34. Any employee working before or after specified hours shall be paid overtime as hereinafter provided, excepting as specified in the preceding section.

Section 35. Employees shall be paid time and one-half for all time over eight (8) hours per day and for over forty (40) hours per week. Double time will be paid for work done on Sundays, New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas Day. Time and a half shall be paid for work on Saturdays.

Section 36. In lieu of Section 35, premium paid for over eight (8) hours a day and over forty (40) hours per week, for New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, and for the sixth and seventh consecutive days worked in a regularly scheduled workweek shall be in accord with Federal statutes and with the directive orders of the President of the United States and Appendix B attached hereto based thereon, while such statutes and orders are in effect.

Section 37. Should a holiday fall on Sunday, it will be observed on the following day.

Section 38. Emergency overtime, of which an employee has not been notified at least two (2) hours previous to the time of starting work on his shift, will not be compulsory. (Ordered by the Detroit Regional War Labor Board September 23, 1943.)

Section 39. Any employee not reporting as provided in the preceding section shall be penalized. The penalty for such violation shall be determined by the Management and the Executive Shop Committee.

Respondent's Exhibit No. 1

Section 40. No overtime in a department shall be worked until employees with seniority in that department who have been laid off are recalled, except in emergencies, or because of temporary schedule increases where it would be impractical to recall additional employees.

Section 41. (a) The minimum going rate will be 91 cents per hour for all employees. The hiring rate for the foregoing employees shall be three cents below the foregoing rate for the first thirty (30) days of their employment. After such thirty (30) days they shall receive the going rate.

(b) All other employees shall receive ten cents less than the going rate of their classification for the first thirty (30) days of their employment. At the end of such thirty (30) days they shall receive a five cent increase. After sixty (60) accumulated days of their employment in the same department of the same Company they shall receive the going rate of their classification. The provisions of this subsection shall not apply to employees in skilled departments which have an established minimum hiring rate. Any wage adjustments resulting from this paragraph shall be retroactive to January 6, 1943. (Ordered by the Detroit Regional War Labor Board September 23, 1943.)

(c) All productive and hourly non-productive employees when working on the second shift will receive an additional four per cent bonus and those on the third shift will receive a six per cent bonus, subject to approval by the War Labor Board.

Section 42. Pay day shall be once a week.

Section 43. Employees shall not be required to suspend work without pay during regular working hours to absorb overtime.

Section 44. The allowance of an overtime premium for any hour excludes that hour from consideration of overtime payment on any other basis, thus eliminating a double overtime. This means that no overtime shall be paid for twice.

Respondent's Exhibit No. 1

Section 45. No employee's hourly rate of pay shall be reduced in case the employee changes jobs except where the duration of the job change is in excess of eight (8) hours and excepting job changes due to the inability of the employee to perform his work, or due to reduction of force, resulting in seniority transfers. (Ordered by the Detroit Regional War Labor Board September 23, 1943.)

Section 46. When an employee is rehired by one Company hereto from one of the other Companies hereto, he shall receive the going rate of his new occupation within thirty (30) days of such rehire, provided he has at least sixty (60) days seniority in the Company from which he came.

Section 47. In the event there shall be any change in the national wage policy which permits of adjustment in existing wage rates, scales or relationships, the matter of wages may thereupon be reopened by either party.

Article VI.

General Rules.

Section 48. Any employee or supervisor violating any terms of this agreement will be subject to discipline by the Companies up to and including discharge.

Section 49. Starting and quitting time shall be strictly observed, and employees shall not enter the plant more than thirty (30) minutes before starting time. During such thirty-minute period employees shall conduct themselves in an orderly manner and shall not disturb other employees who are at work or otherwise interfere with the earning power of employees at work.

Section 50. The Companies reserve the right to publish other rules from time to time not inconsistent with the terms of this agreement.

Section 51. It shall be the duty of the Executive Shop Committee to cooperate with the Companies and the em-

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ployees in the strict observance of the rules and provisions of this agreement to the end that the mutual interests of the parties hereto may be promoted and harmony and cooperation may be maintained at all times.

Section 52. The Companies agree that the Personnel Director will be available for consultation with the Executive Shop Committee at any reasonable time. The Managers of the Companies will be available for consultation should the necessity arise.

Section 53. All decisions affecting the financial status of any employee due to injustice on the part of the Companies or their supervision shall be retroactive to the date on which such injustice occurred, provided it was reported in writing to the Personnel Director or his assistant within ten (10) days after the injustice occurred.

Section 54. The right to select, retain, transfer or discharge employees is exclusively that of the Management provided it is not used for the purpose of discrimination and is in accordance with seniority and other provisions herein established.

Section 55. The Companies shall furnish a bulletin board for the Union's use at each time clock and allow the use of the Companies' bulletin boards in departments, the Union to submit all notices to the Personnel Director of Companies for approval.

Section 56. The Union agrees that its representatives and members will not, on Company time, solicit membership in the Union and that its representatives and members will not intimidate or coerce employees in any manner or at any time. The Companies also agree that this rule shall apply to other organizations or associations.

Section 57. There shall be a twelve (12) minute rest period in the first half of each shift defined by starting and stopping signals given by the Company.

Section 58. When an employee who has been disabled and who has not been working due to a compensable in-

jury which arose out of and in the course of his employment with the Companies is able to return to work, such employee may be placed at work by the Companies in any department or classification of the Companies regardless of such employee's seniority rating. All employees of the Companies waive their seniority rights to such extent in favor of such injured employee who is able and does return to work; provided, however, that such injured employee upon his return to work shall have top seniority only for a period of thirty (30) days. Whenever practical, the injured employee shall replace a junior employee in the employ of the Companies. After such thirty (30) days, a review of the case shall be made by the Companies and the Executive Shop Committee to determine whether such injured employee's seniority shall be further extended. This section shall not apply to overtime work.

Section 59. The Companies will make every effort to keep the Union informed of impending layoffs or increases in force. A master seniority list of all plants shall be furnished Local 306 every sixty (60) days upon the request therefor by the Union.

Section 60. All employees on the seniority list on February 1, 1944 shall receive a bonus of two per cent (2%) of their 1943 total earnings, in lieu of vacations with pay for 1944, payments thereof to begin May 10, 1944, and be completed by July 10, 1944.

Article VII.

Duration.

Section 61. This agreement shall become of full force and effect on the 18th day of March, 1944, and shall continue until December 31, 1944, and thereafter until terminated, modified, or amended as herein provided. Should either party hereto desire to terminate, modify, or amend this agreement on or after December 31, 1944, such party shall give thirty (30) days' notice in writing to the other party of such intent to so terminate, modify or amend.

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In Witness Whereof the parties have hereunto set their hands to duplicates hereof on the day and year first above written.

EDWARD G. BUDD MANUFACTURING COMPANY, DETROIT DIVISION,
BUDD WHEEL COMPANY, DETROIT,
BUDD INDUCTION HEATING, INC., DETROIT.

By:
W. H. FARR,
Vice-President;
ROBERT H. ERWOOD,

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
Affiliated with the C.I.O.,

By:
S. J. CHMIELEWSKI,
Its International Representative;

LOCAL 306,

By:
RICHARD L. SCHMIDT,
Its President;

By:
EDWARD RIZNER,
Its Vice-President;
CLYDE PERKINS
IRVIN COFFMAN
ROBERT DOOLEY
PAUL DUPONT
RUSSELL McCRACKEN
PHILLIP MULLEN
Bargaining Committee.

Respondent's Exhibit No. 1

Appendix A.

Budd Manufacturing Co.

Department	No. of Chief Stewards
1	3
5	1
7	1
10	3 (on 4th floor)
10 and 11	3 (on 1st floor)
12 (Trim)	2
12 (Sewing room)	2
13	3
15	3
17	2
22	1
23	2
24	3
25	1
26	1
27	3
28	2
31	2
39	2
47	2

Respondent's Exhibit No. 1

Budd Wheel Co.

Department	No. of Chief Stewards
50, 51 and 92	2
54	3
60	3
61 (grinding room)	2
61 (tool room)	3
63 and 73	2
65	3
66	2
67 (Lehotsky's division)	3
67 (Carter's division)	2
67 (Hallman's division)	3
69	3
75	3
77	3
79	3
64 and 81	3
82	2
83	2
86 and 152	1
154	3
200	3
201	3
202	2
203	3
620	1

Budd Induction Heating, Inc.

2

Respondent's Exhibit No. 1

Appendix B.

As Ordered By the National War Labor Board
January 3, 1944.

1. There shall be a regular scheduled work week for all employees of the Companies covering a period of seven (7) consecutive days. The work week shall begin on Monday at 7:00 A. M. and close on Monday at 7:00 A. M.

2. Time and one-half shall be paid as follows:

A. For all work over eight (8) hours in any one (1) day.

B. For all hours of work on the sixth (6th) day worked in the regular scheduled work week.

C. For all work performed on any of the following holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day.

3. Double time shall be paid as follows:

For all hours of work on the seventh (7th) day worked in the regular scheduled work week.

4. Absence from work for any of the following reasons shall be considered as a day worked for computing days of work under the Order:

A. Full days of absence for purposes of double time pay:

1. When no work is performed on any of the holidays enumerated in Paragraph 2-C above, and

2. When an employee reports for work and is not instructed otherwise and is sent home because of conditions beyond his control.

A-1. Full days of absence for purposes of time and one-half pay:

1. When because of accident sustained in the employ of the Companies.

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2. When laid off during the work week by the Companies, except a disciplinary layoff or for reasons entirely the fault of the employee.

3. When requested to remain off or sent home by the Companies.

4. When in the case of Union officers and committeemen time is lost because of Union activities which take them from their jobs and/or the plant, provided that such activities shall be concerned solely with the relationship between the Union and these Companies.

B. Part days of absence for purposes of sixth (6th) and/or seventh (7th) day pay:

1. When caused by an injury at work.

2. When caused by illness, providing a physician's statement is furnished to the Employment Department by Saturday of that week, if requested.

3. When sent home because of lack of work, or requested to remain off.

4. When called home from work due to an emergency, such as sickness, death, or other calamity, providing written proof is furnished to the Employment Department by Saturday of that week.

5. When in the case of Union officers and committeemen, because of Union activities which take him from the job and/or plant, providing written proof is furnished to the Employment Department by the Union president by Saturday of that week, and providing that such activities shall be concerned solely with the relationship between the Union and these Companies.

5. In cases where an employee has lost time of his own accord during the work week, for unjustifiable reasons, time and one-half and double time shall not be paid for work on the sixth (6th) and/or seventh (7th) day until after such lost time is made up.

RESPONDENT'S EXHIBIT NO. 2.

Respondent's Exhibit No. 2 consists of 18 forms, used by foremen in respondent's plant. The forms are designated respectively:

Material Requisition;
Employee's Department Transfer;
Request for Leave of Absence;
Personal Property Pass;
Employee's Gate Pass;
Dispensary Report of Disabled Employee;
Dispensary Discharge of Disabled Employee;
Foreman's Recommendation for Employee's Release;
Requisition for Help;
Payroll Deduction Voucher;
Material Move Ticket;
Daily Time Statement;
Rate Change Notice;
Department Request for Work to be Done;
Employee's Time Card;
Grievance Report;
Overtime Authorization;
Daily Production Report.

This description of Respondent's Exhibit No. 2 shall be printed in lieu of Respondent's Exhibit No. 2.

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PROCEEDINGS IN THE

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT

CAUSE ARGUED AND SUBMITTED

(December 4, 1946—Before: HICKS, ALLEN and MILLER, JJ.)

This cause is argued by W. R. Consedine for Petitioner and by Albert E. Meder for Respondent and is submitted to the Court.

DECREE

(Filed June 3, 1947)

This case having been considered by the Court on the record, briefs and oral arguments of counsel,

And it appearing that the findings of the Board that the respondent had interfered with and coerced supervisory employees, members of Foreman's Association of America, Chapter 77, an independent union of supervisory employees, in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act in violation of Section 8(1) of the Act, and that it had discriminated in regard to the hire and tenure of employment of Oscar Owens, one of the foremen, and a member of said Union, in violation of Section 8(3) of the Act, are supported by substantial evidence and accordingly are conclusive; (Section 160(e), Title 29, USCA);

And it having been decided by the Supreme Court that such supervisory employees and foremen are "employees" within the meaning of the Act, Packard Motor Car Company v. National Labor Relations Board ..... U. S. ....., decided March 10, 1947;

It Is Accordingly Ordered that the petition of the National Labor Relations Board for a decree enforcing its order herein of January 30, 1946 be sustained on the authority of that case, and it is now decreed that said order be and is now enforced and that the respondent and its officers, agents, successors and assigns comply therewith.

Approved for entry:

(s) Shackelford Miller, Jr.,
Circuit Judge.

CLERK'S CERTIFICATE

UNITED STATES CIRCUIT COURT OF APPEALS
For the Sixth Circuit

I, J. W. Menzies, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the case of *National Labor Relations Board* v. *Edward G. Budd Manufacturing Company*, No. 10,259, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 5th day of August, A. D. 1947.

J. W. Menzies,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

(seal)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No.....

EDWARD G. BUDD MANUFACTURING COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent

PETITION FOR WRIT OF CERTIORARI TO UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

To the Honorable Supreme Court of the United States:

Edward G. Budd Manufacturing Company, petitioner herein, respectfully prays for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit to review an Order of that Court entered in this case on June 3, 1947, and shows as follows:

1. Summary Statement of Matters Involved

The petitioner is a Pennsylvania corporation, operating, among other plants, a plant at Detroit, Michigan, in which at the time in question it manufactured fabricated steel products, including heavy duty auto-truck bodies, aircraft bomb-bay doors, and miscellaneous stampings (R. 33).

The proceedings in the Circuit Court of Appeals for the Sixth Circuit were on petition filed in that Court by the National Labor Relations Board for enforcement of that Board's Order of January 30, 1946, directed to petitioner herein (R. 53).

The Order of the Board was made on a complaint (R. 22) issued by the Board on May 4, 1945, alleging that the petitioner had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act (49 Stat. 449, Title 29 U. S. C. A., Sec. 151)—specifically, as far as this case is now concerned, that petitioner violated Section 8(3) of the Act by discharging Oscar Owens (a foreman) on or about April 14, 1944 because he joined and assisted the Foreman's Association of America, hereinafter called the Union, and by refusing to reinstate him since that date for the same reason; and that petitioner violated Section 8(1) of the Act by, beginning on or about March 19, 1944, and at various times thereafter, interrogating petitioner's supervisors as to whether or not they were members of or were engaged in activities on behalf of the Union, by advising, urging and warning its supervisors to refrain from assisting, becoming or remaining members of the Union, by warning and threatening its supervisors that they would be discharged unless they resigned their membership in or

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ceased to engage in activities on behalf of the Union, by advising and warning its supervisors that rather than have the Union come into the Detroit plant it would shut down the plant, by vilifying, disparaging and expressing disapproval of the Union, and by stating to and informing its supervisors that it was opposed to and would prevent the organization of its supervisors in the Union. Petitioner duly filed and served a combined motion to dismiss and an answer (R. 26). In the motion it urged that the complaint should be dismissed because supervisors were not included within the guarantees of the National Labor Relations Act. The answer stated that, without waiving the motion, Oscar Owens was laid off and petitioner refused to reemploy him because as a supervisor "he attempted to organize members of the Company's supervision into a labor organization, and that, when warned that continuation of such action would result in his being laid off, he agreed to discontinue such activities but failed to do so, whereupon he was laid off." Further answering, petitioner denied that it advised and warned its supervisors that rather than have the Union come into the Detroit plant the plant would be closed down, and denied that it had "vilified" the Union.

The matter was heard by a Trial Examiner who filed his "Intermediate Report" (R. 31) in which he denied the motion to dismiss and found: (1) "that the foremen at the plant are supervisory employees who occupy an intermediate position between top management and the rank and file employees" (R. 36); (2) that "in their own departments, as supervisors, they exercise a good deal of discretion in carrying out their duties" (R. 37); (3) "that the Union activities of Owens played a part in his selection for lay-off. In any event, there is no dispute that he was refused further employment, which would normally have been offered him, solely because of his union activi-

ties. This in itself was a violation of Section 8 (3) of the Act" (R. 39); and (4) that either the petitioner's director of personnel or the plant manager questioned certain foremen as to their membership in the Union, told certain foremen that they must either resign from the Union or the Company, requested them to stop all organizational activity, and that "Subsequently, all foremen, separately or in small groups, were called before" the director of personnel and plant manager "and other supervisors and questioned as to why they wanted a union • • • They were told they did not need a union, that respondent did not want them to belong to a union, and that respondent was opposed to a Union of foremen" (R. 35), which "conduct constituted interference, restraint and coercion and is not protected as an exercise of free speech" (R. 36) and was a violation of Section 8 (1) of the Act.

Petitioner filed proper exceptions (R. 47).

In its "Decision and Order" (R. 53) dated January 30, 1946, the Board "adopts the findings, conclusions, and recommendations of the Trial Examiner" (R. 53). It ordered (R. 55), as far as this case is now concerned, that petitioner

> "1. Cease and desist from:
>
> (a) Discouraging membership in the Foreman's Association of America, by discharging, laying off or refusing to transfer to production jobs any of its supervisory employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment;
>
> (b) In any other manner interfering with, restraining, or coercing its supervisory employees in the exercise of the right to self-organization, to form, join, assist or bar-

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gain collectively through Foreman's Association of America, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

"2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Oscar Owens immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges;

(b) Make whole Oscar Owens for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages during the period from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during such period;

(c) Post immediately at its plant at Detroit, Michigan, copies of the notice attached hereto, marked 'Appendix A.' Copies of said notice to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by the respondent, be posted by it immediately, upon receipt thereof, and maintained for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by other material;

(d) Notify the Regional Director for the Seventh Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith."

The petition of the Board to the Circuit Court of Appeals for the Sixth Circuit (R. 1) recited the proceedings before it, set forth the Board's Order, asserted that the Order had been duly served and that the Company had refused to comply with the Order and prayed for enforcement of the Order.

The answer of the petitioner in the Circuit Court of Appeals to the petition of the Board for enforcement (R. 6) urged in substance that the Board's Order should not be enforced because the foremen involved were not within the guarantees of the National Labor Relations Act in that they were not employees within the meaning of the Act, that they were not the kind of employees to whom Congress intended to grant the guarantees of the Act, and that the policies of the Act, the national welfare and the public interest would not be effectuated by holding these foremen to be within the Act.

On June 3, 1947, the Circuit Court of Appeals for the Sixth Circuit ordered enforcement of the Board's Order. (Under the procedure of the Sixth Circuit, the Court's Order operates as a decree, no separate decree being entered.) The Court stated in its Order (R. 321) that the findings of the Board were supported by substantial evidence,

> "And it having been decided by the Supreme Court that such supervisory employees and foremen are 'employees' within the meaning of the Act, Packard Motor Car Company v. National Labor Relations Board, — U. S. —, decided March 10, 1947: IT IS ACCORDINGLY ORDERED that

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the petition of the National Labor Relations Board for a decree enforcing its order herein of January 30, 1946, be sustained on the authority of that case * * *."

On June 23, 1947, the Labor Management Relations Act, 1947, was enacted (Public Law 101—80th Congress, Chapter 120). It, among other things, provides procedures to be taken in labor disputes, and in Title I amends the National Labor Relations Act, effective August 22, 1947.

Nowhere in the 1947 Act, including the amendments to the National Labor Relations Act, does Congress give the Board any power to proceed with such a case as this one, although Title I does specifically provide that representation matters processed under the Act prior to amendment are not to be affected for a stated period of time. In addition, under the 1947 Act, supervisors are no longer employees under the National Labor Relations Act and, therefore, no longer within the coverage of the Act.

To be more specific as to the effect of the Labor Management Relations Act on the instant case:

(a) Section 1 is entitled "Short Title and Declaration of Policy" and states in part that "It is the purpose and policy of this Act * * * to provide orderly and peaceful procedures * * *"

(b) As to the amendments to the National Labor Relations Act, Section 104 of Title I provides that:

"The amendments made by this title shall take effect sixty days after the date of enactment of this Act * * *."

Accordingly, the amendments become effective August 22, 1947.

(c) Section 2 (3) of the National Labor Relations Act (Definitions) is in part amended by Section 101 of Title I as follows:

> "The term 'employee' • • • shall not include • • • any individual employed as a supervisor • • •."

Section 2 of the National Labor Relations Act is also amended by Section 101 of Title I by adding a new subsection (11), reading:

> "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

Section 101 of Title I amends the National Labor Relations Act by adding a new Section 14 (a), reading:

> "Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining."

(d) Section 101 of the 1947 Act amends Section 10(a) of the National Labor Relations Act and reads in part:

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"The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce."

Section 8 lists the unfair labor practices but, of course, none of them apply to supervisors because, as we have just shown, supervisors have not been within the coverage of the Act since August 22, 1947.

(e) In addition to the foregoing amendments to the National Labor Relations Act, Section 10(c) of the Act has been amended by Section 101 of the Labor Management Relations Act, 1947. However, for our purpose here, there has been no change in the language in Section 10 (c) as it has to do with an order of the Board when the Board finds an unfair labor practice:

"* * * the Board * * * shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, *as will effectuate the policies of this Act* * * *." (Emphasis supplied.)

II. Basis Upon Which This Court Has Jurisdiction to Review the Order of the Circuit Court of Appeals

(a) This Honorable Court has jurisdiction to review the Order of the said Circuit Court of Appeals under the provisions of Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925; 43 Stat. 938; Title 28, U. S. C. A., Sec. 347.

(b) The statutes of the United States involved in this proceeding are the Acts of Congress known as the National Labor Relations Act (Act of July 5, 1935, C. 372;

49 Stat. 449; Title 29, U. S. C. A., Sec. 151 *et seq.*), and the Labor Management Relations Act, 1947, (Public Law 101—80th Congress, Chapter 120), pertinent provisions of which are set forth on pages 7, 8 and 9 of this petition.

(c) The Order of the Circuit Court of Appeals for the Sixth Circuit now sought to be reviewed was filed by that Court on June 3, 1947 and is final, but should now be set aside because of the subsequent enactment of the Labor Management Relations Act, 1947.

III. Statement of Questions Involved

The questions presented are, no one to be considered as a waiver of any other:

(a) Whether the Order of the said Circuit Court of Appeals should be set aside because of the provisions of Title I of the Labor Management Relations Act, 1947, set forth on pages 6, 7 and 8 of this petition.

(b) Whether, because of the Labor Management Relations Act, 1947, the Board is now without power to further process this case and, therefore, the Order of the Sixth Circuit should be set aside.

(c) Whether, because of the Labor Management Relations Act, 1947, the Circuit Court of Appeals has no present legal power or jurisdiction to enforce the Board's Order.

(d) Whether the Order of the said Circuit Court of Appeals should be set aside because of the enforcement of that Order, due to the Labor Management Relations Act, 1947, would result in requiring a useless formality no longer authorized, commanded or sanctioned by law.

(e) Whether, in the light of the provisions of the Labor Management Relations Act, 1947, the remedial ob-

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jectives of the National Labor Relations Act, as amended, would be achieved by requiring compliance by petitioner with the Order of the said Circuit Court of Appeals.

(f) Whether, in the light of the provisions of the Labor Management Relations Act, 1947, the policies of the National Labor Relations Act, as amended, would be effectuated by requiring compliance with the Order of the said Circuit Court of Appeals.

(g) Whether, in the light of the provisions of the Labor Management Relations Act, 1947, the remedial objectives of the National Labor Relations Act, as amended, would be frustrated by requiring compliance by petitioner with the Order of the said Circuit Court of Appeals.

(h) Whether, in the light of the provisions of the Labor Management Relations Act, 1947, the policies of the National Labor Relations Act, as amended, would be frustrated by requiring compliance with the Order of the said Circuit Court of Appeals.

IV. Reason Relied On for the Allowance of the Writ

The decision of the said Circuit Court of Appeals, in the light of the aforesaid amendments to the National Labor Relations Act, decides an important question of Federal law which has not been, but should be, settled by this Court, and has the effect of deciding a federal question in a way probably in conflict with applicable decisions of this Court.

Wherefore, your petitioner prays that this Honorable Court grant its writ of certiorari directed to the Circuit Court of Appeals for the Sixth Circuit, requiring the complete record of this cause in said Court to be certified to this Court, and that this Court will thereupon proceed to correct the errors herein complained of.

And your petitioner will ever pray, etc.

EDWARD G. BUDD MANUFACTURING COMPANY,
By ARCHIBALD BROOMFIELD,
Attorney for Petitioner,
ALBERT E. MEDER,
BEAUMONT, SMITH & HARRIS,
Of Counsel,
11th Floor Ford Building,
Detroit 26, Michigan.

Dated: August 26, 1947.

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BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

The Order of the Circuit Court of Appeals is, as yet, unreported. It will be found on page 321 of the Record.

JURISDICTION

1. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of June 7, 1934, C. 426; 48 Stat. 926; Title 28, U. S. C. A., Section 347.

2. The Order of the Circuit Court of Appeals for the Sixth Circuit was filed June 3, 1947. No petition for rehearing was filed. (The last day for filing such a petition expired June 23, 1947 (Rule 28, Rules of the United States Circuit Court of Appeals for the Sixth Circuit), whereas Title I of the Labor Management Relations Act, 1947 did not become effective until August 22, 1947. This petition for certiorari is being filed after the effective date of Title I but prior to the expiration of the 90 days allowed by rule of this Court.)

3. The nature of the case, the ruling of the said Circuit Court of Appeals, and the reasons for the issuance of a writ of certiorari, are set forth in the foregoing petition.

4. The grounds upon which the writ is prayed are two of the reasons therefor contained in Rule 38 (5) of the Rules of this Honorable Court, to-wit:

(a) The decision of the said Circuit Court of Appeals (because of the subsequent enactment of the Labor Management Relations Act, 1947) decides an important question of federal law which has not been, but should be, settled by this Court.

(b) The decision of the said Circuit Court of Appeals (because of the subsequent enactment of the Labor Management Relations Act, 1947) has the effect of deciding a federal question in a way probably in conflict with applicable decisions of this Court.

STATEMENT OF THE CASE AND QUESTIONS INVOLVED

In the interest of brevity, no attempt will be made to repeat the facts and questions presented as they are alleged in the foregoing petition for certiorari.

As we set forth in detail on pages 7, 8 and 9 of the foregoing petition, the amendments to the National Labor Relations Act, as found in Title I of the Labor Management Relations Act, 1947, provide that supervisors are no longer employees under the Act. Therefore, they are not now within the coverage of the Act.

Among other provisions, the amendments provide (Sec. 2 (3)) that "The term 'employee' * * * shall not include * * * any individual employed as a supervisor," and define "supervisor" (Sec. 2 (11)) as "any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively recommend such action if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

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The supervisors here involved, including Owens, clearly fall within the definition.

The Trial Examiner found (R. 36, 37) "that the foremen at the plant are supervisory employees who occupy an intermediate position between top management and the rank and file employees," and "in their own departments, as supervisors, they exercise a good deal of discretion in carrying out their duties."

In its "Decision and Order" (R. 53) the Board "adopts the findings, conclusions and recommendations of the Trial Examiner * * *"

We cite the following undisputed testimony, not only as substantial support for the Examiner's and the Board's findings as to these employees being supervisors, but because under the Administrative Procedure Act, Title 5, U. S. C. A., Section 1009 (e), as is said in *National Labor Relations Board v. Thompson Products, Inc.*, 6 Cir., ... F. 2d ..., 20 L. R. R. M. 2291, 2302, "the reviewing court in making its determinations shall 'review the whole record or such portions thereof as may be cited by any party * * *'"

The strata of supervisors in this plant, beginning at the top, was, at the time of the events here involved (R. 191), composed of the general manager, seven superintendents (R. 187), eight assistant superintendents, 38 general foremen, 78 foremen, and five assistant foremen (R .188). Leaders were not considered as supervisors (R. 159).

The only differences between foremen and assistant foremen were that the latter were temporary at times of peak production and were hourly rated rather than salaried (R. 214, 215).

The Company's supervisors supervised about 2900 rank and file employees (R. 189).

The general manager, superintendents, assistant superintendents, general foremen and foremen were all salaried (R. 188) and always had been (R. 191). The assistant foremen were hourly rated (R. 188). The salary range of general foremen was from $400 to $575 per month and of foremen from $325 to $400 per month. The hourly rate of assistant foremen ranged from $1.21 to $1.44 per hour (R. 189).

Owens received a salary of $390 a month (R. 189).

The individuals in this plant whom the Foreman's Association of America was trying to organize were the foremen and the general foremen (R. 73, 174). The officers of the local of the Foreman's Association of America who were interrogated in the offices of the Company were foremen (R. 74). It was the foremen who were subsequently interviewed by some of the Company's top management (R. 85).

Owens was a foreman (R. 94, 96, 110, 175).

These foremen and assistant foremen confined their work solely to supervisory duties (R. 194, 237). The Company had no so-called working foremen (R. 237).

Supervision had always been excepted from the Company's contracts with the union representing its rank and file employees (R. 192).

The grievance procedure established by those contracts, since 1937, provided that "In case the grievance cannot be settled between the employee or his chief steward and his foreman, the chief steward shall present the grievance in writing to the foreman of the department on a form provided for that purpose, and it shall be mandatory for the foreman of the department to acknowledge the receipt of the complaint in writing and enter his disposition thereon." This procedure was closely followed (R. 193).

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At least 90 per cent of the grievances of rank and file employees were settled by foremen (R. 195).

These foremen authorized pay rate changes of rank and file employees. They supervised the working force. It was their responsibility to place employees on the right jobs; to train employees to perform the jobs; to see to it that the proper quantity and quality of materials were produced and that their employees worked in a safe manner; that their departments were clean and orderly; to control scrap; and to get the right kind of stock and sufficient of it (R. 197). If scrap was being made, the foreman determined whether it was the fault of the employee or of improper equipment and tools, and he made recommendations for the correction of the condition. He saw to it that his department was properly manned as to the number of help and the type of employees. He recommended merit increases, and was responsible for automatic increases being granted at the proper time (R. 198). He saw to it that his production schedules were met (R. 199). "The foremen have more to do with discipline than anybody else" (R. 199, 200). "It is up to them to see that people behave themselves properly while in the plant, and that when they do not behave properly, then it is up to them to recommend disciplinary action up to and including discharge." Foremen determined during the 60 day probationary period of new employees whether such employees should be retained (R. 200). Foremen decided whether employees should be transferred from one department to another, and from one job to another (R. 201). It was the foreman's responsibility to change operations and change methods if by so doing he could improve the job "and he has complete authority to do so." He had authority to promote and demote. He saw to it that production costs were kept down (R. 203). He had a right to recommend discharges (R. 205).

He saw to it that people worked in accord with their seniority (R. 230). At times he was the one who made agreements with union representatives of the rank and file employees, and the Company was bound thereby (R. 233). He was solely responsible as to who worked overtime (R. 234).

In all of the foregoing the foreman exercised discretion (R. 208, 209).

It was after the foregoing testimony that the Trial Examiner, during the hearing, said (R. 257): "A foreman it has been testified to, has certain authority—call it limited—of course it is subject to control higher up, but certainly I will deduce that within the limits of his directing power in a particular department or shop, the foreman can do anything he wants to."

So that it is evident that the supervisors here involved are within the definition of the term "supervisor" contained in the amendments to the National Labor Relations Act.

STATUTES INVOLVED

The federal statutes involved are the National Labor Relations Act (Act of July 5, 1935, c. 372; 49 Stat. 449; Title 29, U. S. C. A., Section 151 *et seq.*) and the Labor Management Relations Act, 1947, (Public Law 101—80th Congress, Chapter 120) pertinent sections of each of which statutes are set forth on pages 7, 8 and 9 of the foregoing petition for certiorari. The following sections of the National Labor Relations Act, prior to the amendment thereof, are the ones upon which the Board found petitioner guilty of unfair labor practices:

> "Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organi-

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zations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

"Sec. 8. It shall be an unfair labor practice for an employer—

"(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

"(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *."

SPECIFICATION OF ERRORS TO BE ALLEGED

(No one specification of error is intended to waive any other.)

(a) The Board has no power under the law as it now exists to proceed to a conclusion with this case, and, therefore, the order of the Sixth Circuit enforcing the Board's Order should be set aside.

(b) The Circuit Court of Appeals, because of the provisions of the Labor Management Act, 1947, has no present legal power or jurisdiction of the Board's Order in this case.

(c) The Order of the Sixth Circuit in respect to the Board's Order requires a useless formality no longer authorized, commanded or sanctioned by law.

(d) The Order requires that petitioner (1) cease and desist from discouraging membership in the Foreman's Association of America, etc., (2) offer Oscar Owens (a foreman) reinstatement, (3) make him whole for any loss of pay, and (4) post the notice, no one of which is now required by law.

(e) The remedial objectives of the National Labor Relations Act, as amended, would not be achieved by now requiring petitioner, as the Order of the Sixth Circuit provides in respect to the Board's Order, to cease and desist from discouraging membership in the Foreman's Association of America, or from in any other way interfering with, restraining or coercing its supervisors in self-organizational activities, etc., inasmuch as the supervisors here involved are not now employees within the Act.

(f) The remedial objectives of the Act, as amended, would not be achieved by now requiring petitioner, as the Order of the Sixth Circuit provides in respect to the Board's Order, to offer to Oscar Owens immediate and full reinstatement to his former or substantially equivalent position and back pay.

(g) The remedial objectives of the Act, as amended, would not be achieved by requiring petitioner, as the Order of the Sixth Circuit provides in respect to the Board's Order, to post the notice designated by the Board (R. 57).

(h) It would not effectuate the policies of the Act, as amended, to now require petitioner to comply with the Order of the Sixth Circuit in respect to the Board's Order in that the amendments contained in Title I of the Labor Management Relations Act, 1947, furnish no foundation for enforcement.

(i) It would frustrate the remedial objections and policies of the National Labor Relations Act, as amended, to require compliance by the petitioner with the Order of the said Circuit Court of Appeals.

ARGUMENT

Petitioner urges that the writ of certiorari as prayed should be granted because important questions of federal law are involved which have not been but should be decided by this Court, and because the decision of the said Circuit Court of Appeals has the effect, due to the Labor Management Relations Act, 1947, of deciding a federal question in a way probably in conflict with applicable decisions of this Court.

More specifically, petitioner urges that because of the Labor Management Act, 1947 the Circuit Court of Appeals has no present legal power or jurisdiction to enforce the Board's Order. Further, that due to the 1947 Act the Order of the Sixth Circuit should be set aside because a court will not lend itself to requiring a useless formality no longer authorized, commanded or sanctioned by law; because the remedial objectives of the National Labor Relations Act, as amended, would not be achieved, nor the policies of the Act, as amended, be effectuated by enforcement of the Order of the Sixth Circuit; and because the objectives and policies of the Act, as amended, would be frustrated by the enforcement of the Board's Order as provided for in the Order of the Circuit Court of Appeals.

Under such circumstances and in the interest of justice it would seem that the last word, the ultimate guiding rule, should be announced by this Court as to whether an unfair labor practice involving supervisors, which arose under the Act prior to amendment and which is in the course of being processed by the Board, should proceed to a conclusion as though the Act had not been amended, and whether an order of the Board based on the Act prior to amendment should be enforced.

Federal questions of substance are presented which have not heretofore been determined by this Court.

The Board has not spoken decisively on the subject. In instructions issued to its regional offices under date of July 3, 1947, the Board stated as to election cases: "Dismiss immediately all petitions seeking certification of units involving supervisory employees. (Public Law No. 101, Sec. 2(3) states: 'the term "employee" • • • shall not include • • • any individual employed as a supervisor.')" (20 L. R. R. 149).

But it did not instruct the dismissal or continuance of unfair labor practice cases involving supervisors which arose under the Act prior to amendment, nor has it stated what its position is in respect to such cases. All it has said on the subject is contained in the instructions to which reference has just been made: "(2) Reexamine immediately all cases in which complaints have issued but in which hearings have not as yet started. If the alleged violations also constitute illegal conduct under the Act as amended, proceedings may go forward into hearings as scheduled. All other cases should be submitted to the Washington office of the Board with recommendations. (3) All future complaints are subject to the provisions of item 2."

We respectfully submit that the following are at least some of the pertinent matters in relation to the questions we have raised and that they should be presented more fully to this Court, as can be done after the issuance of the writ of certiorari:

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I.

THE CIRCUIT COURT OF APPEALS, BECAUSE OF THE PROVISIONS OF THE LABOR MANAGEMENT RELATIONS ACT, 1947, HAS NO PRESENT LEGAL POWER OR JURISDICTION OF THE BOARD'S ORDER IN THIS CASE

A. Relevant events subsequent to the Order of the Sixth Circuit should be considered by this Court.

Relevant events subsequent to the date of the Order of the Sixth Circuit and subsequent to the Board's Order should be considered by this Court in deciding whether the Order of the Sixth Circuit should be set aside.

The rule for which we contend is stated in *Patterson v. Alabama*, 294 U. S. 600, 607, quoted with approval in *Ashcraft v. Tennessee*, 322 U. S. 143, 156, as follows:

> "We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered."

In *Carpenter v. Wabash Railway Co.*, 309 U. S. 23, 27, this Court adopted the statement of the rule as propounded by Chief Justice Marshall in *United States v. Schooner Peggy, 1 Cranch* 103, 110:

> "It is in the general true that the province of an appellate court is only to inquire whether a judgment when rendered was erroneous or not. But if, subsequent to the judgment, and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligations denied • • •

> In such a case the court must decide according to existing laws, and if it be necessary to set aside a judgment, rightful when rendered, but which cannot be affirmed but in violation of law, the judgment must be set aside."

In the *Carpenter* case, *supra*, after a decision by a Circuit Court of Appeals to the effect that a judgment in a personal injury suit against the Railway did not constitute a preferred claim against the receiver, the federal Bankruptcy Act was amended (August 11, 1939, 53 Stat. 1406, subsection (n) of section 77) to provide that in such a receivership proceeding such claims were preferred. On that showing in a petition for certiorari, the writ was granted by this Court.

"A change in the law between a *nisi prius* and an appellate decision requires the appellate court to apply the changed law." *Ziffrin, Inc. v. United States,* 318 U. S. 73, 78.

"It is the case that is here now that must be decided, and it must be decided on the basis of the circumstances that exist now. *Cf. Vandenbark v. Owens-Illinois Co.,* 311 U. S. 538, 542-43, and cases there cited." *Public Utilities Commission of Ohio v. United Fuel Gas Co.,* 317 U. S. 456, 466.

See as well *Watts, Watts & Co. v. Unione Austriaca Di Navigazione,* 248 U. S. 9, 21, and cases there cited.

In *National Labor Relations Board v. Jones & Laughlin Steel Corp.,* 67 S. Ct. 1274, the question originally before the Board, and the Circuit Court of Appeals, was whether members of a militarized plant protection force were entitled to the guarantees of the National Labor Relations Act. The Board answered in the affirmative. The Sixth Circuit came to the opposite conclusion on the ground that

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it would not be in the public interest to permit the organization of plant guards by the same union as that which represented the production employees (p. 1278). The Board petitioned the Supreme Court for certiorari, setting forth that the plant guards were no longer militarized. In issuing certiorari (325 U. S. 838), the Supreme Court set aside the order of the Circuit Court of Appeals and instructed that Court to determine whether the fact that the guards were no longer militarized affected its previous conclusions.

In the course of the Supreme Court's opinion, it was said (p. 1278) that the validity of the Board's order

> "* * * must be judged as of the time when it was issued, a time when the guards were still militarized. *This is not to say, however, that events subsequent to demilitarization are irrelevant in deciding whether the order should be enforced.*" (Emphasis supplied.)

Later in the Supreme Court opinion (p. 1280) it appears that after the Board's order was issued and after the guards at one of the plants were demilitarized, the guards were deputized by police authorities. "The Board claims that since this matter was not raised before it, the court below was precluded by Sec. 10 (e) of the Act from considering the effect of the deputization upon the propriety of enforcing the Board's order." Sec. 10 (e) provides that "No objection that has not been urged before the Board, its members, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances." The Court concluded that the language of the section referred to objections that might have been but were not raised before the Board, the deputization of these guards occurring after the Board had issued its

Order and after the court below had refused for the first time to enforce the order.

> "When circumstances do arise after the Board's order has been issued which may affect the propriety of enforcement of the order, the reviewing court has discretion to decide the matter itself or to remand it to the Board for further consideration. For example, where the order obviously has become moot, the court can deny enforcement without further ado * * *" (p. 1281).

The rule for which we contend is especially applicable to a proceeding, such as the instant one, in which the relief operates in *futuro*. Thus in cases in which an injunction is prayed, the appellate courts freely apply the law prevailing at the time of the disposition of the question on appeal, and not the law which prevailed at the time the decree appealed from was rendered. *Texas Company v. Brown*, 258 U. S. 466, 474; *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, 464; *American Steel Foundries v. Tri-City Central Trades Council*, 257 U. S. 184, 201.

In the instant case an important circumstance has arisen since the issuance of the Board's Order and the Order of the Circuit Court of Appeals which affects the lower court's Order and the propriety of the enforcement of the Board's Order, and which should be considered by this Court. This circumstance, of course, is the enactment by Congress on June 23, 1947 of the Labor Management Relations Act, 1947, Title I of which, effective August 22, 1947, amends the National Labor Relations Act. The amendments that are relevant here are set forth beginning on page 6 of the foregoing petition.

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B. Subsequent relevant events leave the courts without power or jurisdiction to enforce the Board's Order in this case.

The National Labor Relations Board is a creature of statute. It has only those powers given it by statute.

Not only does Title I of the Labor Management Relations Act, 1947, in setting forth the powers of the National Labor Relations Board, expressly fail to give the Board power to continue processing an unfair labor practice case involving a practice which is no longer prohibited by the Act as amended, but it limits the continuing effect of Board action (taken in accord with the Act prior to amendment and not authorized in the amendments) solely to representation matters.

To be more explicit:

(1) The declaration of policy of the 1947 Act is contained in Section 1 of that Act. Subsection (b) of that section reads in part: "It is the purpose and policy of this Act to provide orderly and peaceful procedures * * *." In other words, Congress in the 1947 Act set up the procedures to be followed after the Act became law and after each of the titles became effective. As we have said, Title I became effective August 22, 1947. But Congress did not in Title I, which title is devoted to amendment of the National Labor Relations Act, provide for a procedure to carry on existing unfair labor practice cases involving supervisors. Rather, Section 101 of Title I amends Section 10 of the National Labor Relations Act, which latter section has to do with the enforcement of the Act. As amended, Section 10 reads in part "(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce." However, there is no longer an unfair labor practice in Section 8 as to supervisors. There-

fore, Congress not only by subsection (b) of Section 1 of the 1947 Act, but as well by the amended Section 10 of the National Labor Relations Act, has clearly shown its intention not to have the processing of such a case as this one continued.

(2) The National Labor Relations Act, both before and subsequent to amendment, is made up of two subject matters. The first has to do with representation and the second with unfair labor practices. As far as representation is concerned, Section 103 of Title I of the 1947 Act provides that certifications of representatives or any determinations as to the appropriate collective bargaining unit, made under Section 9 of the National Labor Relations Act prior to amendment, shall remain in effect until one year after the date of certification or if in respect of which a collective bargaining contract was entered into prior to August 22, 1947, until the end of the contract period or until August 22, 1948, whichever occurs first. Thus Congress made provision in the 1947 Act for the continuing effect of representation matters as determined under the National Labor Relations Act prior to amendment and which representation matters are not in accord with the provisions of Title I of the 1947 Act. But it did not make provision for the continuance in effect of unfair labor practice cases not in accord with the 1947 statute. Thus it plainly showed its intention that on and after August 22, 1947 the latter should no longer be effective.

It cannot be ~~successively~~ successfully argued that Congress meaninglessly, as to unfair labor practice cases no longer supported by the Act as amended, provided only for the continuance in effect of pending representation matters not supported by the amendments. In the 1947 Act, when Congress desired to keep new provisions of that statute from affecting pending matters, it was careful to expressly so state. Thus Title II sets up a new agency to

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handle mediation and conciliation and new methods of procedure in respect thereto, and provides for the transfer of the functions of the old agency to the new. (Subsection (d) of Section 201). But it is expressly stated that "Such transfer shall not affect any proceedings pending" before the old agency "or any certification, order, rule, or regulation theretofore made by it (the old agency) or by the Secretary of Labor." In addition, Congress there provided as to "any proceedings" before the old agency. On the other hand, in Title I it states that it saves only representation matters in conflict with the amendments—not unfair labor practices no longer recognized as such.

It is not uncommon for Congress, in amending a federal statute, if it desires that all pending proceedings under that statute be concluded in accord with the statute prior to amendment, to say so. We have already referred to the fact that in Title I of the 1947 Act Congress expressly kept alive representation matters in conflict with the amendments to the National Labor Relations Act. Also, in Title II of the 1947 Act Congress expressly provided that pending mediation and conciliation matters should continue to a conclusion. In addition, we note for instance, that in Section 2 of the Act of June 19, 1936 (Title 15, U. S. C. A., Section 21a)—the Clayton Act—Congress expressly stated that "Nothing contained in this section or sections 13, 13a, 13b of this title shall affect rights of action arising or litigation pending, or orders of the Federal Trade Commission issued and in effect or pending on review, based on section 13 of this title, prior to June 19, 1936 * * *." Another example is the resolution passed by Congress, extending the life of the Emergency Price Control Act of 1942, as amended, to June 30, 1946, in which in Section 18 thereof it is provided that "any proceeding, petition, application or protest which was pending under the Emergency Price Control Act of 1942,

as amended, or the Stabilization Act of 1942, as amended, on June 30, 1946, shall be proceeded with and shall be effective in the same manner and to the same extent as if this Act had been enacted on June 30, 1946." The resolution so passed by Congress was approved July 25, 1946. Title 50, U. S. C. A., Appendix, Section 901a *et seq.*

In connection with the argument we are making, note the following:

> "In case a statute is repealed or rendered inoperative, no further proceedings can be had to enforce it in pending prosecutions unless competent authority has kept the statute alive for that purpose." *United States v. Chambers,* 291 U. S. 217, 223. "'By the repeal the legislative will is expressed that no further proceedings be had under the Act repealed.' See, also, *Norris v. Crocker,* 13 How. 429, 440; *Gulf, C. & S. F. Ry. Co. v. Dennis,* 224 U. S. 503, 506." Id., p. 223.

Even if it be considered that we are arguing for retroactive operation of the 1947 statute, it must be remembered that "The rule that statutes are to be given a prospective, rather than a retrospective, operation, is well recognized; but, like other rules of interpretation, it is resorted to to give effect to the presumed and reasonably probable intention of the Legislature, when the terms of the statute do not of themselves make it certain or clear, and cannot be invoked to change or defeat the intention when it is made obvious or manifest by the terms of the statute." *Lamb v. Powder River Live Stock Co.,* 8 Cir., 132 F. 434, 436.

That necessary implications may require giving retroactive effect to a statute is recognized in *Harvey v. Tyler,* 69 U. S. 328, 347.

The rule against a retroactive interpretation of a statute "is merely a more or less artificial aid in arriving at the true intention of the Legislature, and will not govern if in conflict with the general objectives of the legislation." *United States v. Balestra,* 3 Cir., 88 F. 2d 43, 44.

In *Smallwood v. Gallardo,* 275 U. S. 56, suits had been brought in the District Court of the United Statee for Porto Rico to restrain the collection of taxes imposed by the laws of Porto Rico. On January 7, 1927, the Circuit Court of Appeals affirmed decrees of the District Court dismissing the bills. On March 4, 1927, by c. 503, Section 7, of the Act of that year, Congress provided that Section 48 of the Act, which provides for civil government for Porto Rico, should be amended, among other things, to provide "That no suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Porto Rico shall be maintained in the District Court of the United States for Porto Rico." 44 Stats. 1418, 1421. Writs of certiorari were granted by the Supreme Court on May 16, 1927. The Supreme Court held that the statute applied to existing suits, saying in part (p. 61):

> "• • • To apply the statute to present suits is not to give it retrospective effect but to take it literally and to carry out the policy that it embodies of preventing the Island from having its revenues held up by injunction; a policy no less applicable to these suits than to those begun at a later day, and a general policy of our law. Rev. Stat., Sec. 3224. So interpreted the Act as little interferes with existing rights of the petitioners as it does with those of future litigants. There is no vested right to an injunction against collecting illegal taxes and bringing these bills did not create one."

And on page 62:

> "Of course it does not matter tnat these cases had gone to a higher court. When the root is cut the branches fall. *McNutty v. Batty*, 10 How. 72."

Inasmuch, then, as the Board no longer has power to proceed with the instant case, it would seem to inevitably follow that the Order of the Sixth Circuit enforcing the Board's Order should be set aside due to the fact that that court has lost jurisdiction.

"It is equally well settled that if a law conferring jurisdiction is repealed without any reservation as to pending cases, all such cases fall with the law." *Railroad Co. v. Grant*, 98 U. S. 398, 401.

"It is clear, that when the jurisdiction of a cause depends upon a statute the repeal of the statute takes away the jurisdiction," even though that effect may not have been contemplated by Congress. *Insurance Company v. Ritchie*, 72 U. S. 541, 544, cited with approval in such cases as *Ex parte McCardle*, 74 U. S. 506, 514; *The Assessor v. Osbornes*, 76 U. S. 567, 573; *In re Hall, Petitioner*, 167 U. S. 38, 42.

II.

THE COURT WILL NOT LEND ITSELF TO REQUIRING A USELESS FORMALITY NO LONGER AUTHORIZED, COMMANDED OR SANCTIONED BY LAW

The enforcement of the Order of the Circuit Court of Appeals would mean that petitioner would be required to (1) cease and desist from discouraging membership in the Foreman's Association, etc., (2) offer Oscar Owens (a foreman) reinstatement, (3) make him whole as to any loss in pay, and (4) post a notice in which it would say to all of its employees that it would do the foregoing.

To require such action on the part of petitioner would be a useless formality no longer authorized, commanded or sanctioned by law.

What if petitioner did not cease and desist in discouraging membership in the foreman's union? There is no statute upon which to base contempt.

What if petitioner reinstated the foreman Owens and discharged him immediately thereafter? Where is there a statute upon which the Board could then proceed?

What if petitioner posted the notices and almost immediately destroyed them?

As for any money to be paid to the foreman Owens, as we shall hereinafter show beginning on page 42 hereof, the payment thereof was enforceable under the National Labor Relations Act, prior to its amendment by Title I of the Labor Management Relations Act, 1947, only in the public interest. No private right was involved. But now, due to the fact that supervisors are no longer within the guarantees of the National Labor Relations Act, as amended, there is no public right remaining in the matter. No public right would be served by giving to Owens, the

foreman, any money. Therefore, payment to him now would as well be a useless formality.

In *Mills v. Green,* 159 U. S. 651, this Court dismissed an appeal from a lower court without considering the merits of the case where, pending an appeal from a decree dismissing a bill in equity to secure the right to vote at an election of delegates to a constitutional convention, the election had been held and the convention had assembled on the days specified by statute.

The Court cited (p. 655) with approval *The State of Pennsylvania v. The Wheeling and Belmont Bridge Co.,* 18 How. 421. There this Court in 1852 granted an injunction against the construction and maintenance of a bridge because it would obstruct free navigation, but suspended enforcement for a limited time to allow the carrying out of a plan by which the obstruction to navigation might be removed. Later that year an act of Congress authorized the bridge at its then site and elevation. Two years later the bridge blew down. When defendant proposed to rebuild it according to the original plan, plaintiff secured in vacation an injunction, notwithstanding which defendant proceeded to erect the bridge. Then, upon defendant's motion to dissolve the injunction, plaintiff filed motions for an attachment for contempt, etc. This Court held that following the act of Congress the portion of its former decree which directed alteration or abatement of the bridge could not be carried into execution, and, therefore, refused attachment and dissolved the injunction.

In *Berry v. Davis,* 242 U. S. 468, a bill was filed to enjoin the State Board of Parole and others from performing vasectomy upon the plaintiff in accord with the state statute. An injunction issued and an appeal was taken to the Supreme Court. Thereafter the state statute was repealed. Citing the *Mills* case, *supra,* the bill was ordered

dismissed. To the same effect, see *Dinsmore v. Southern Express Co.*, 183 U. S. 115.

In connection with this phase of our argument, we repeat that we hereinafter point out (pages 42 through 45) that public rights and not private rights are protected by the National Labor Relations Act. The importance of that fact in relation to the law that a court will not order a useless thing to be done is emphasized by *Hodges v. Snyder*, 261 U. S. 600. There the plaintiffs, as resident taxpayers, filed a complaint in a state Circuit Court challenging the validity of a consolidated school district and praying that the school district should be enjoined from issuing bonds, etc. The state Supreme Court held that the attempted organization was not authorized by law and remanded the case for further proceedings. The Circuit Court thereupon issued a permanent injunction. Then the legislature passed a curative act. Whereupon defendants moved to set aside the injunction, the motion was denied, and on appeal the Supreme Court of the state remanded the case with direction to dissolve the injunction. Plaintiffs contended in the United States Supreme Court that the curative statute, not having been enacted until after the injunction had issued, deprived them, without due process, of private property rights which had vested in them under the adjudications. The Supreme Court said (p. 603):

> "It is true that, as they contend, the private rights of parties which have been vested by the judgment of a court cannot be taken away by subsequent legislation, but must be thereafter enforced by the Court regardless of such legislation. • • •
>
> "This rule, however, as held in the *Wheeling Bridge* case (18 How. 421), does not apply to a suit brought for the enforcement of a public right which, even after it has been established by the

judgment of the court, may be annulled by subsequent legislation and should not be thereafter enforced; although, in so far as a private right has been incidentally established by such judgment, as for special damages to the plaintiff or for his costs, it may not be thus taken away. *Pennsylvania v. Wheeling Bridge Co., supra*, p. 431, 439. This case has been cited with approval in *The Clinton Bridge* case, *supra*, p. 463 (likewise involving a public, as distinguished from a private, right of action), *United States v. Klein, supra* (13 Wall. 128), p. 146, *Stockdale v. Insurance Companies, supra* (20 Wall. 323), p. 332, and *Mills v. Green, supra* (159 U. S. 651) p. 655. And so a judgment for the restitution of taxes collected under the ostensible authority of a general statute will be reversed when, after the rendition of such judgment, a statute has been passed legalizing and ratifying such taxation. *Rafferty v. Smith, Bell & Co., supra* (257 U. S. 226) p. 232.

"In the *Wheeling Bridge* case, as in the *Clinton Bridge* case, the public right involved was that of abating an obstruction to the navigation of a river. The right involved in the present suit, of enjoining the maintenance of an illegal school district and the issuance of its bonds, is likewise a public right shared by the plaintiffs with all other resident taxpayers. And while in the *Wheeling Bridge* case the bill was filed by the state, although partly in its proprietory capacity as the owner of certain canals and railways (9 How. 647, 648), the doctrine that a judgment declaring a public right may be annulled by subsequent legislation, applies with like force in the present suit, although brought by individuals primarily for their own benefit; the right involved and adjudged, in the one case as in the other, being public, not private.

"The judgment of the Supreme Court in this case affected merely the public right involved—the plaintiffs' judgment for costs not being impaired,—

and was clearly in accordance with the doctrine of the *Wheeling Bridge* case."

Thus it is evident that not only the cease and desist portion of the Board's Order in the instant case and the part of the order requiring reinstatement of Owens and posting of the notice, but the requirement of back pay to Owens, as well, all being public rights, may now, and should be denied enforcement.

III.

THE REMEDIAL OBJECTIVES OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED, WOULD NOT BE ACHIEVED, NOR THE POLICIES OF THE ACT, AS AMENDED, BE EFFECTUATED, BY THE ENFORCEMENT OF THE ORDER OF THE SIXTH CIRCUIT

Without waiving the fact that the Board does not now have power to proceed with such a case as this one, and that the court lacks jurisdiction, for which reasons the Order of the Sixth Circuit should be set aside, petitioner urges that the remedial objectives of the Act, as amended, will not be achieved by the Order of the Sixth Circuit.

Section 10 (c) of the Act, prior to amendment and as amended by the 1947 Act, provides that the Board, if it concludes that an unfair labor practice has been engaged in or is being engaged in, may issue "an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act."

It is under the authority of this provision of the Act that the Board issued its Order (R. 55), digested on page 4 of the foregoing petition.

In commenting upon the extent of the authority thus granted the Board as to its orders, this Court, in *Republic Steel Corp. v. National Labor Relations Board,* 311 U. S. 7, 10, 12, said that "The Act is essentially remedial. It does not carry a penal program * * *. The Act does not prescribe penalties or fines * * * it is not enough to justify the Board's requirements to say that they would have the effect of deterring persons from violating the Act. That argument proves too much, for if such a deterrent effect is sufficient to sustain an order of the Board, it would be free to set up any system of penalties which it would deem adequate to that end. We think that affirmative action to 'effectuate the policies of this Act' is action to achieve the remedial objectives which the Act sets forth."

"The power to command affirmative action is remedial, not punitive, and is to be exercised in aid of the Board's authority to restrain violations and as a means of removing and avoiding the consequences of violation where those consequences are of a kind to thwart the purposes of the Act." *Consolidated Edison Co. v. National Labor Relations Board,* 305 U. S. 197, 236.

"The authority to require affirmative action to 'effectuate the policies' of the Act is broad but it is not unlimited." *National Labor Relations Board v. Fansteel Metallurgical Corp.,* 306 U. S. 240, 257.

"It is the Board's order on behalf of the public that the court enforces." *Amalgamated Utility Workers v. Consolidated Edison Co.,* 309 U. S. 261, 269.

As to a reimbursement order, this Court, in *Virginia Electric & Power Co. v. National Labor Relations Board,* 319 U. S. 533, 543, said that such an "order is not a redress for a private wrong. Like a back pay order, it does restore to the employees in some measure what was

taken from them because of the Company's unfair labor practices. In this, both these types of monetary awards somewhat resemble compensation for private injury, but it must be constantly remembered that both are remedies created by statute—the one explicitly and the other implicitly in the concept of effectuation of the policies of the Act—which are designed to aid in achieving the elimination of industrial conflict."

"No provision in it (the Act) authorizes an employee to make claim. The Act does not purport to confer, it does not confer, private rights * * *. The procedure the statute outlines is not designed to award, the orders it authorizes do not award, damages as such. The proceeding is not, it cannot be made, a private one to enforce a private right. It is a public procedure, looking only to public ends * * *. The statute authorizes reparation orders not in the interest of the employee, but in the interest of the public. A cease and desist order operating retrospectively is not a private award, operating by way of penalty or of damages. It is a public reparation order * * *." *Agwilines, Inc. v. National Labor Relations Board,* 5 Cir., 87 F. 2d 146, 150, 151, a case involving discharges. The foregoing is cited with approval by the Sixth Circuit in *National Labor Relations Board v. Colten,* 105 F. 2d 179, 182. And this Court has cited the *Agwilines Inc.* case as authority for the statement that "They (the Board's orders) vindicate public, not private rights." *Virginia Electric & Power Co. v. National Labor Relations Board, supra* p. 543.

The Act creates no private right. *National Labor Relations Board v. Sunshine Mining Co.,* 9 Cir., 125 F. 2d 757, 761, cert. denied 312 U. S. 678. A proceeding by the Board is "in the public interest It is neither punitive nor compensatory but preventative and remedial in na-

ture." *National Labor Relations Board v. Thompson Products, Inc.*, 6 Cir., 130 F. 2d 363, 367; *National Labor Relations Board v. Leviton Mfg. Co.*, 2 Cir., 111 F. 2d 619, 621.

The Order (R. 55) requires petitioner to cease and desist from discouraging membership in the Foremen's Association of America, etc. But the Act no longer requires petitioner to do so. (The Association's membership is limited to supervisors R. 293). Therefore no remedial objective would be accomplished by enforcing the Order. *Republic Steel Corporation* case, *supra.* Failure of petitioner to comply would not thwart the Act as amended, and there is no longer any reason to remove and avoid the consequences of something which is no longer guaranteed by the Act. *Consolidated Edison Co.*, case *supra.*

The Order also requires petitioner to offer Owens reinstatement and make him whole for loss of pay. But the power to command affirmative action is not punitive. *Republic Steel Corp.* case, *supra; Consolidated Edison Co.* case, *supra; Thompson Products Inc.* case, *supra; Leviton Mfg. Co.* case, *supra.* Nor does the Act create any private right. *Virginia Electric & Power Co.* case, *supra; Sunshine Mining Co.* case, *supra; Agwilines Inc.* case, *supra.* Nor is a proceeding under the Act compensatory. *Thompson Products, Inc.* case, *supra.* Nor is there any longer any reason to remove and avoid the consequences of something which is not now guaranteed. *Consolidated Edison Co.* case, *supra.* No remedial objective would be accomplished by enforcing reinstatement and back pay. *Republic Steel Corp.* case, *supra.*

The Order further requires petitioner to post, and keep posted for 60 days, a "Notice to All Employees" (R. 57) in which it agrees not to interfere with the organization of its supervisors and agrees to offer Owens reinstate-

ment and make him whole. To enforce this portion of the Order would not have a remedial objective or meet any of the other requirements of law as we have stated them in relation to the other portions of the Order.

It therefore follows that the remedial objectives of the Act would not be achieved and the policies of the Act would not be effectuated by allowing the Order of the Circuit Court of Appeals enforcing the Board's Order to stand.

IV.

THE OBJECTIVES AND POLICIES OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED, WOULD BE FRUSTRATED BY THE ENFORCEMENT OF THE BOARD'S ORDER AS PROVIDED IN THE ORDER OF THE SAID CIRCUIT COURT OF APPEALS

Petitioner submits that not only would the remedial objectives of the Act, as amended, not be achieved, nor the policies of the Act, as amended, effectuated, by the enforcement of the Board's Order as provided in the Order of the Circuit Court of Appeals, but such objectives and policies would be frustrated.

The object of both the National Labor Relations Act and of the Labor Management Relations Act, 1947 is to promote industrial peace.

Industrial peace would be endangered by the enforcement of the Board's Order.

As we have said, that Order requires petitioner to (1) cease and desist from discouraging membership in a foremen's union, etc., (2) reinstate a foreman named Owens, (3) make him whole as to any lost wages, and (4) post copies of a notice in the plant and keep them posted for 60 days. The notice (R. 57) will inform the supervisors in

the plant, of whom there are about 136 (R. 187, 188), that petitioner has agreed to all the foregoing. The required notice reads (R. p. 57):

"Notice to All Employees."

"Pursuant to
A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

"We will not in any manner interfere with, restrain, or coerce our supervisory employees in the exercise of their right to self-organization, to form, join, assist, or bargain collectively through Foreman's Association of America, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

"We will offer to Oscar Owens immediate and full reinstatement to his former and substantially equivalent position without prejudice to any seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay suffered as a result of the discrimination.

"All our supervisory employees are free to become or remain members of the above-named union. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any supervisory employee because of membership in or activity on behalf of said labor organization.

Edward G. Budd Manufacturing
Company, (Employer)

By.....
(Representative) (Title)

Dated....."

In other words, for 60 days these 136 supervisors will be constantly told that under the law they are protected in unionizing and in demanding collective bargaining from their employer. The reinstatement of Owens with back pay will be held up before them as an example of what will happen to their employer if he resists their efforts to organize and force bargaining. Naturally the notice will bear fruit.

But then what will happen? The 136 will eventually learn that they are not protected in their organizational efforts by any statute; that no law requires their employer to collectively bargain with them; that their efforts as far as their employer is concerned were useless; and, in fact, that when the notice was first posted and all during the 60 days they were gravely misled.

Industrial peace will be frustrated.

CONCLUSION

Petitioner submits that because of the foregoing the writ of certiorari should issue as prayed.

The result of the enactment of the Labor Management Relations Act, 1947, and especially of Title I thereof, amending the National Labor Relations Act, effective August 22, 1947, has resulted in the decision of the said Circuit Court of Appeals deciding an important question of federal law which has not been, but should be settled by this Court, and, in addition, has resulted in the said Court's decision deciding a federal question in a way probably in conflict with applicable decisions of this Court.

Respectfully submitted,

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August 26, 1947.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 301

EDWARD G. BUDD MANUFACTURING COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent

PETITIONER'S REPLY TO BOARD'S MEMORANDUM IN OPPOSITION TO ISSUANCE OF WRIT OF CERTIORARI AS PRAYED

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Due to the shortness of time, and because some of the argument contained in the "Memorandum for the National Labor Relations Board" is answered in petitioner's brief in support of its petition for certiorari, this reply is limited.

I.

GENERAL SAVINGS STATUTE DOES NOT APPLY

Neither the facts of this case, nor the authorities, support the Board's contention (p. 13 of its Memorandum)

that 1 U. S. C. A. 29 (Act of February 25, 1871, C. 71, Sec. 4, 16 Stat. 431) is applicable here. The section reads:

> "The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability."

Of this statute this Court said in *Great Northern Railway Company v. United States,* 208 U. S. 452, 465:

> "• • • As the section of the Revised Statutes in question has only the force of a statute, its provisions cannot justify a disregard of the will of Congress as manifested either expressly or by necessary implication in a subsequent enactment. But while this is true the provisions of Sec. 13 are to be treated as incorporated in and as a part of subsequent enactments, and therefore under the general principles of construction requiring, if possible, that effect be given to all parts of a law the section must be enforced unless either by express declaration or necessary implication, arising from the terms of the law, as a whole, it results that the legislative mind will be set at naught by giving effect to the provisions of Section 13."

1.

Congress, both in Title 1 of the Labor Management Relations Act, 1947 (Public Law 101—80th Congress, Chapter 120—1st Session), which is the portion of the 1947 statute amending the National Labor Relations Act, and in the bills which subsequently became Title I, clearly showed its intention to regard Title I not as a repealing

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statute by rather as an amendatory act. It uses some form of the word "amend" throughout. "Repeal" is not mentioned.

The title of the Act reads, in part, "To *amend* the National Labor Relations Act * * *." (Emphasis furnished unless otherwise designated.)

Title I is entitled by Congress as "*Amendment* to the National Labor Relations Act."

The first sentence of Sec. 101 of the Act reads: "The National Labor Relations Act is hereby *amended* to read as follows: * * *"

In Sec. 3 (a) of Sec. 101 Congress specifically refers to the Board as it existed under the Act "prior to its *amendment*."

In Sec. 102, entitled "Effective Date of Certain Changes," Congress speaks of "the National Labor Relations Act as *amended* by this title * * *."

In Sec. 104 of Title I Congress says that "The *amendments* made by this title shall take effect sixty days after the date of the enactment of this Act * * *."

There is no repealing section in Title I nor in the Act.

So that as far as the language of the Title is concerned, we repeat that Congress throughout uses only some form of "amend."

An examination of the House Bill (H. R. 3020), as reported by the House Committee on Education and Labor, discloses that the bill was considered as a bill to amend the National Labor Relations Act. Sec. 101 reads "The National Labor Relations Act is hereby *amended* to read as follows: * * *" Nor is there any repealing section in the Bill.

The same is true of the Senate Bill (S. 1126), as reported by the Senate Committee on Labor and Public Welfare. The title of the bill, the title of Title I, and the first sentence under Title I each use some form of the word "amend." There is no repealing section in the Bill.

Therefore it is clear that Congress, both in the Act and in the bills, viewed Title I as an amendment and not as a repeal statute.

Moreover, an examination of Title I discloses that each section of the Title follows the same section number, with the same subject matter in each section and in many instances using the same language, as does the National Labor Relations Act as enacted in 1935, excepting that one new section, numbered 14, is inserted near the end of the 1947 statute, which section 14 provides that nothing in the Title prohibits a supervisor from becoming a member of a union, etc., and provides that nothing in the Title should be construed as setting aside the effect of any state or territorial law prohibiting the closed or union shop. Also, there is added at the end of Title I three sections entitled "Effective Date of Certain Sections." Otherwise, we repeat, Title I is devoted section by section to the same subject matters as the sections of the 1935 National Labor Relations Act, with much of the language of the 1935 Act retained.

The Circuit Court of Appeals for the Second Circuit, in an opinion filed November 5, 1947, in *National Labor Relations Board v. Sandy Hill Iron & Brass Works*, ... Fed. 2d ...., 21 L. R. R. M. 2021, said generally as to the effect of the Labor Management Relations Act, 1947:

> "• • • It did amend the first statute above cited, the Wagner Act, in certain respects but in others left it unaltered."

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All these facts indicate that the intention of Congress was solely to amend the 1935 statute, and that Congress did not consider Title I as a repealing statute.

2.

What Congress did in Title I of the 1947 statute was merely to limit the meaning of the definition of "employee" as it was contained in the National Labor Relations Act when enacted in 1935 (49 Stat. 449, 29 U. S. C. 151).

Under the 1935 Act supervisors were within the coverage of that statute for the reason that in the definition of "employee" in Section 2 (3) thereof there was no exception as to them. *Packard Motor Car Co. v. National Labor Relations Board*, 330 U. S. 485.

What Congress did in Title I of the 1947 Act as far as supervisors were concerned, was to continue in effect, in the same section and in the same subsection (Section 2 (3)), the definition of the word "employee," but expressly excluded in the subsection "any individual employed as a supervisor."

The definition of "employee" was not repealed. In general, it was continued in effect. The most that can be said is that the meaning of the word was limited.

3.

Congress, by the express language it used in Title I of the 1947 statute, evidenced the extent to which it intended to keep matters under the National Labor Relations Act prior to amendment in effect after amendment.

Thus in Section 102 of Title I Congress provided that the outlawing of the closed shop and the restrictions on

the union shop, which Congress placed in Sections 8 (a) (3) and 8 (b) (2) "of the National Labor Relations Act as amended by this title," should not make "an unfair labor practice the performance of any obligation under a collective-bargaining agreement entered into prior to the date of the enactment of this Act, or (in the case of an agreement for a period of not more than one year) entered into on or after such date of enactment, but prior to the effective date of this title * * *."

And in Section 103 Congress said that nothing in the Title "shall effect any certification of representatives or any determination as to the appropriate collective bargaining unit, which was made under section 9 of the National Labor Relations Act prior to the effective date of this title, until one year after the date of such certification or if, in respect of any such certification, a collective bargaining contract was entered into prior to the effective date of this title, until the end of the contract period or until one year after such date, whichever first occurs."

Having in Title I expressly continued in effect the foregoing subject matters of the National Labor Relations Act of 1935, it would seem to follow that the intent of Congress was to limit the continuing effect of the provisions of the 1935 Act, as changed by the 1947 Act, solely to the foregoing.

4.

By failing in the 1947 amendments to increase the scope of the power of the Board as respects the contents of Board orders, Congress shows an intention not to have section 29 apply.

In respect to the scope of its order in the instant case, the Board followed its customary practice of requiring (1) that the employer cease and desist; (2) that the dis-

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criminatorily discharged supervisor be reinstated; (3) that he be paid for lost time; and (4) that copies of a notice be kept posted for 60 days.

The power of the Board to so order is found in Section 10 (c) of the Act, as the statute was enacted in 1935. That section provides that, if the Board is of the opinion that any person has engaged in or is engaging in an unfair labor practice, the Board shall issue an order

> "requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *"

The scope of an order to be made by the Board is not enlarged in the 1947 amendment, the same language being retained (Section 10(c) of Section 101).

Certainly if this case had been tried but was awaiting the issuance of a Board order when Title I of the 1947 statute became effective, the power of the Board to issue its order would have been governed by the foregoing portion of Section 10 (c) as contained in the amendments. And, inasmuch as the power of the Board in its orders is limited in respect to affirmative action by statute to such action as will effectuate the purposes of the Act, and inasmuch as the amended Act does not protect supervisors, it must follow that the Board would have been without power to order such affirmative action as reinstatement, back pay, and the posting of the notice. To be specific—as concerns the cease and desist portion of such an order, it would not only be contrary to public policy to so require, but the Board would not make such an order because to do so would be a useless act in that the employer would not be required to heed it, supervisors no longer being covered by the Act.

Such being the situation if the instant case had been tried but was awaiting the issuance of a Board order when Title I of the 1947 Act became effective, it follows that Congress by not extending the power of the Board in respect to Board orders did not intend Section 29 to apply.

There is no reason to believe that Congress had any different intention as to an order of the Board, such as the one in this case, which was issued by the Board before the amendments became effective and was later in the course of litigation in the courts. Congress must have known that it would not now effectuate the policies of the Act to require reinstatement, back pay and posting of the notice, and that the cease and desist portion of the order would not now be in accord with public policy.

So that by failing in the amendments to increase the scope of the power of the Board as respects Board orders, Congress shows an intention not to have Section 29 applicable to a situation such as the instant one.

5.

A contrary conclusion would lead to attributing to Congress an absurd intention.

Supervisors now being excluded from the coverage of the Act, the Budd Company would nevertheless, if the Board's latest contention is correct, now be required under the Board's order to reinstate the foreman and to make up for any loss of pay.

Yet there is no question but that under Title I the petitioner could immediately after offering the foreman employment, discharge him because of his former union activity, or for any other reason, and not be in contempt of court.

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That the statute does not authorize back pay without reinstatement is covered in a subsequent portion of this Reply.

6.

Under its express language, 1 U. S. C. A. 29 is not applicable here.

The common law rule was that on repeal of a statute without any reservation of penalties, all proceedings taken under it fell. *United States v. Reisinger,* 128 U. S. 398, 401.

Section 29, being in contravention of the common law, must be strictly construed. *Ranson v. Williams,* 69 U. S. 313, 318; *Rodgers v. United States,* 6 Cir., 158 F. 2d 835, 836; *United States v. Hark,* D. C. Mass., 49 F. Supp. 95, reversed on other grounds 64 S. Ct. 359; *Moore v. United States,* 8 Cir., 85 F. 465, 470; *United States v. Chambers,* 291 U. S. 217; *United States v. Auerbach,* D. C., S. D., Cal., 68 F. Supp. 776.

Such being true, it is in place to point out that not only in the title of Section 29 but three times in the body of the section Congress speaks of a "statute" being repealed—not some provision in a statute Thus the section is entitled "*Repeal of statutes* as affecting existing liabilities." The first few words of the section are "The repeal of any *statute* shall not have the effect * * *." The penalty, etc., is the one incurred "under such *statute.*" Also "such *statute* shall be treated as remaining in force * * *" In other words, the section is only applicable when a statute as a whole is repealed. That is what Congress has said. At the most, all that can be argued here, if the language of Congress in the 1947 Act in reference to amending the 1935 Act is completely ignored, as well as our other foregoing arguments, is that, as concerns the

Budd case, the 1947 Act by implication repeals the coverage of supervisors in the 1935 Act. Thus, at the most, but a portion of the 1935 Act is actually repealed, and at that only a small part. But Sec. 29, by its expressed language, applies only when a statute is repealed.

In addition, Section 29 states that the repeal of any statute shall not have the effect to release or extinguish any penalty, etc., "unless the *repealing* act shall so expressly provide." In other words, the 1947 Act must be a "repealing act" to have Section 29 applicable. We submit from what we have said above that to call the 1947 Act a "repealing act" would be contrary to the intention of Congress and contrary to the language Congress employed in the 1947 Act.

7.

The portions of the order for which the Board now requests enforcement do not constitute a "penalty, forfeiture, or liability" within the meaning of those words as used in Section 29.

The three words were placed in Section 29 sixty-four years prior to the enactment of the National Labor Relations Act in 1935 and seventy-six years prior to the 1947 amendments. Congress at that time, of course, had had no experience with the kind of legislation contained in the National Labor Relations Act.

Moreover, no private right (liability) attaches under the National Labor Relations Act. *Amalgamated Utility Workers v. Consolidated Edison Company of New York,* 309 U. S. 261, 267; *National Licorice Co. v. National Labor Relations Board,* 309 U. S. 350, 362; *Phelps Dodge Corporation v. National Labor Relations Board,* 313 U. S. 177, 194; *Virginia Electric & Power Co. v. National Labor Relations Board,* 319 U. S. 533, 543.

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Nor do the various portions of a Board's order constitute penalties or forfeitures. The Board does not have punitive jurisdiction. *Consolidated Edison Company v. National Labor Relations Board, supra,* 305 U. S. 197, 235, 236; *Republic Steel Corporation v. National Labor Relations Board,* 311 U. S. 7, 10. It is erroneous to characterize a reimbursement order as penal. *Virginia Electric & Power Co. v. National Labor Relations Board, supra,* 319 U. S. 533, 534. Back pay is not a fine or penalty. *Social Security Board v. Nierotko,* 327 U. S. 358, 364.

8.

United States ex rel. Randall v. United States Marshal for Eastern District of New York, 2 Cir., 143 F. 2d 830, cited by the Board on page 12 of its Memorandum, is not in point. There the Court held (p. 831) that

> "Inasmuch as sentence became final before the repeal of the Eighteenth Amendment became effective it remained binding and capable of enforcement. The commitment was a ministerial and not a judicial act which did not prevent the judgment from becoming final prior to the date of the repeal."

That case dealt with the effect of a repeal and not with an amendment. Further, the sentence had become final before the repeal had become effective—"no application for a writ of certiorari was made within the period allowed by statute" (p. 831). In the case at bar, the decree of the Sixth Circuit had not become final when the act of 1947 became effective. Also the decree here sought to be enforced is not a ministerial but a judicial act.

II.

CONGRESSIONAL HISTORY OF THE LABOR MANAGEMENT ACT, 1947 DOES NOT SUPPORT THE BOARD'S CONTENTION

On page 17 of its Memorandum the Board states that "The history of the Labor Management Relations Act shows that Congress considered but rejected a proposal which would have substituted the common law rule for the rule of statutory construction created by the general savings statute. Thus, a provision of Section 102 (c) of the bill passed by the House, which would have had the effect of prohibiting entry by the Board or enforcement by the courts of any order based on prior unfair labor practices unless the conduct involved continued to be an unfair labor practice under the Amendments, was eliminated in conference (see Section 102 (c) of H. R. 3020, 80th Cong., 1st Sess.; Conference Report, H. Rep. No. 510, 80th Cong., 1st Sess., p. 61)."

In answer, we point out not only that Section 102 (c) of the House Bill was not passed by the Senate or considered by the Senate as a whole, but that the rule is that "when taking the Act as a whole, the effect of the language used is clear to the court, extraneous aid like this can not control the interpretation." *Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy Railroad Company,* 257 U. S. 563, 589. See as well *United States v. Shreveport Grain & Elevator Co.,* 287 U. S. 77, 83, approving the foregoing from the *Railroad Commission of Wisconsin* case, and stating that House and Senate committee reports "cannot be resorted to for the purpose of construing a statute contrary to the natural import of its terms."

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Moreover, the fact that the abatement language of the House Bill is not contained in the statute as enacted does not mean that Congress did not intend, under the language it used, that the well accepted rules as to the effect of legislation while a case is pending in the courts should not be applicable. Congress may well have reasoned that those very rules cared for the situation, and that, therefore, the language of the House Bill was surplusage. If words stricken from a bill in one of the legislative houses consttiute surplusage, the action of the legislative body in deleting such wording cannot be used for the purpose of determining legislative intent. This conclusion would seem to follow from *Carey v. Donohue,* 240 U. S. 430, 436, where the question was as to the effect of the Senate striking certain wording from an amendment.

III.

THE BOARD'S POSITION AS TO THE PORTION OF ITS ORDER WHICH SHOULD BE ENFORCED IS INCONSISTENT AND CONTRARY TO THE TERMS OF THE STATUTE

The Board nowhere in its memorandum claims that the foremen here involved are not supervisors within the definition of that word as contained in Section 2 (11) of Section 101 of Title I of the Labor Management Relations Act, 1947 in face of the fact that petitioner in its petition for certiorari alleged they were within the definition, and, beginnning on page 18 of its brief in support of the petition, at length pointed to the finding and uncontradicted evidence to that effect. So that it must be concluded that the Board agrees that these foremen are supervisors as the term is defined in the 1947 amended Act.

The Board's order (R. p. 55) required the petitioner (1) to cease and desist from:

"(a) Discouraging membership in the Foreman's Association of America, by discharging, laying off or refusing to transfer to production jobs any of its supervisory employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment;

"(b) In any other manner interfering with, restraining, or coercing its supervisory employees in the exercise of the right to self-organization, to form, join, assist or bargain collectively through Foreman's Association of America, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act."

The Board's order further requires petitioner (2) to take the following affirmative action *"which the Board finds will effectuate the policies of the Act":* (a) reinstatement (of the foreman) *"to his former or substantially equivalent position* * * *"*; (b) make him whole for any loss of pay; and (c) post and keep posted for 60 days at its plant at Detroit a notice stating (R. p. 57):

"We will not in any manner interfere with, restrain, or coerce our supervisory employees in the exercise of their right to self-organization, to form, join, assist or bargain collectively through Foreman's Association of America, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

"We will offer to Oscar Owens immediate and full reinstatement to his former and substantially equivalent position without prejudice to any seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay suffered as a result of the discrimination.

"All our supervisory employees are free to become or remain members of the above-named union.

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> We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any supervisory employee because of membership in or activity on behalf of said labor organization."

The Sixth Circuit ordered the Board's order enforced. 162 F. 2d 461.

On page 20 of the Board's Memorandum it is said:

> "The National Labor Relations Board consents to the granting of a writ of certiorari for the purpose of striking from the decree of the court below the cease and desist provisions thereof. Subject to these modifications, it is submitted that the decision below is correct in all respects."

Or, as the Board says on page 10 of its Memorandum, paragraphs 1 (a) and 1 (b) should be stricken.

Petitioner consents to the striking but urges that the Board has not gone far enough.

1.

Thus the Board now consents to striking from its order and the order of the Sixth Circuit all reference, among other things, to petitioner "refusing to transfer to production jobs any of its supervisory employees." We so conclude because that language is contained only in the cease and desist portion of the Board's order. Therefore the matter of such refusal is no longer an issue in this case.

2.

This would erroneously leave in effect all of that portion of the order requiring affirmative action on the part of petitioner—to repeat: (a) reinstatement; (b) back payment; and (c) the posting of the notice.

3.

On page 9 of its Memorandum, the Board states that all of the cease and desist portion of the order should be stricken "Since the cease and desist provisions of the decree below enjoin petitioner from engaging in conduct which is now lawful."

(a) First, as to the posting of the notice. The first and third paragraphs thereof, as noted from the above excerpts from the order, cover the same subject matters as does the cease and desist portion of the order. The language employed by the Board in those paragraphs of its order says to supervisors that they are protected by the National Labor Relations Act in engaging in concerted activities.

But that is not now the law, as the Board admits.

Furthermore, as petitioner has set forth, beginning on page 45 of its brief in support of its petition for certiorari, such information given to supervisors, when they are not protected by law, would frustrate the very object of the original and the 1947 amended Act.

Therefore as far as the first and third paragraphs of the notice are concerned, they should be stricken as well.

(b) The second paragraph of the notice pertains to offering the foreman "full reinstatement to his former and substantially equivalent position," and to making him whole for any loss of pay.

The reasons the paragraph of the notice should be deleted are the same as those which petitioner has advanced, in its brief in support of its position, for striking from the order the requirement of offering reemployment to the foreman to his former or substantially equivalent position, and paying him any loss in wages following his discharge.

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But now there is an additional reason for striking all reference in the order to reinstatement and back pay.

The Board recognizing that under the law it is forced to consent to the striking of the cease and desist portions of the order because such portions "enjoin petitioner from engaging in conduct which is now lawful" (Board's Memorandum, p. 9), should apply the same rule of law to reinstatement and back pay.

Reinstatement and back pay surely operate in the future, just as would the cease and desist portions of the order. The foreman has not been offered reinstatement. There has been no offer to make him whole.

The Board in its Memorandum (p. 19) cites *National Labor Relations Board v. Sandy Hill Iron & Brass Works, supra,* 2 Cir., — F. 2d —, 21 LRRM 2021, for its assertion that back pay operates retrospectively.

The case does not so hold. Back pay was not a primary issue in the case.

It did decide that where the employer "violated the applicable statute both as it was when the order was made and as it is now," a Board order prior to amendment should be enforced, although it said that no portion of the Board's order should be interpreted as preventing statements by the employer now protected under Section 8 (c) of Section 101 of the 1947 statute.

But in the course of its opinion the Court did say:

> "• • • To the extent that the preventative portion of the order may be considered to prohibit conduct that is now lawful, they are not enforceable and cannot be made the basis for contempt proceedings. *United States v. Schooner Peggy,* 1 Cranch. 103, 110; *Ziffrin, Inc. v. United States,* 318 U. S. 73; *N. L. R. B. v. Atkins & Co.,* 7 Cir., Sept. 24, 1947."

The Board (p. 19) also cites *National Labor Relations Board v. Killoren*, 8 Cir., 122 F. 2d 609. But there, again, in holding that "in public interest" back pay is a proveable debt in bankruptcy, the court was dealing with the same statute as that which was in effect when the Board's order was entered.

We repeat, then, that reinstatement and back pay operate *in futuro*.

Moreover, the Board expressly states (R., p. 55) in the portion of its order requiring reinstatement and back pay that it so orders because it finds that such action

> "will effectuate the policies of the Act; * * *"

But the policy of the Act is no longer to protect supervisors.

So that the Board's position as to reinstatement and back pay is not only contrary to the amended Act and contrary to the rule of law it recognizes, but as well is wholly inconsistent.

(c) Of course the reason the Board still insists upon the *useless* act of reinstatement—there is nothing in the law to prevent the foreman's discharge the moment after reinstatement might be offered to him—is that *under the law the Board cannot order back pay without reinstatement.*

Section 10 (c) of Section 101 of the Act as amended provides, as it did prior to amendment, that the Board may order a person who has violated the Act to cease and desist from such unfair labor practices

> "and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of the Act."

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As was said in *National Labor Relations Board v. Carlisle Lumber Co.*, 9 Cir., 99 F. 2d 533, 537, cert. denied 306 U. S. 646:

> "• • • The statute says that the Board may order 'reinstatement of employees with or without back pay.' While the act permits the Board to reinstate with or without back pay, it does not, I think, permit an award of back pay without reinstatement, because the back pay provision is connected with and dependent upon the reinstatement provision. • • • In other words, I think Congress was dealing with causes of obstruction affecting commerce, and not with the relationship of master and servant as such. For these reasons, I decline to follow *Mooresville Cotton Mills v. National Labor R. Board*, 4 Cir., 94 F. 2d 61, 66. It was there said that back pay might be awarded without reinstatement because it 'would not offend the terms of the act, would do justice to the worker, and would tend to effectuate the policies of the act.' I think such a construction offends the terms of the act, and what would effectuate the policies of the act is a legislative question for the Board, subject only to the constitutional prohibitions applicable to all such administrative agencies. It may be that such an order would be said to 'do justice to the employee,' yet I think that the real purpose of the statute was to deal with obstructions affecting commerce and that such purpose must be controlling in a construction of the act.
>
> "The only apparent basis for a construction which would permit 'back pay' without reinstatement is by considering that such power arises from the Board's power to order a person guilty of unfair labor practices 'to take such affirmative action • • • as will effectuate the policies of this Act' independently of the words omitted from the quotation, which are: 'including reinstatement of employees with or without back pay.' I believe that since 'reinstatement' and 'back pay' were singled out for special

> treatment, it was intended that the general words were to be limited thereby."

The foregoing was adhered to by the Ninth Circuit in *National Labor Relations Board v. Hearst*, 102 F. 2d 658, 664.

IV.

REPLY TO BOARD'S STATEMENT THAT NO QUESTION OF GENERAL IMPORTANCE IS RAISED

The Board says in its memorandum (p. 21) that "No question of general importance is raised."

Petitioner does not agree.

In the first place, the Board urges that the Labor Management Relations Act, 1947, is a repeal statute. Petitioner has shown herein that it is an amendatory statute. Certainly there must be many cases now pending involving the distinction, and there can be no question but that the decisions of many future cases will turn on the point.

Secondly, the Board says that no question of general importance is raised because the instant case "is the only one now pending in which the judicial decree was entered before the enactment of the 1947 Act" (p. 20). Yet on page 18 the Board admits that it is holding, as it does now in the case at bar, that "the general savings statute must be deemed to preserve 'all liabilities' arising under the National Labor Relations Act prior to its amendment and that for such purposes the original Act must 'be treated as still remaining in force,' regardless of whether the Amendments to the Act prevent such liabilities from arising in the future." It cites from its own decisions *Matter of Marshall & Bruce Co.*, 75 N. L. R. B., No. 13, and *Matter of Pioneer Electric Co.*, 75 N. L. R. B., No. 14 (both decided October 24, 1947). The Board might also have cited such

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cases as *Matter of Rite-Form Corset Co., Inc.*, 75 N. L. R. B., No. ——, 21 LRRM 1011 (decided November 4, 1947), and *Matter of Plankington Packing Co.*, 75 N. L. R. B., No. ——, 21 LRRM 1018 (decided November 19, 1947).

Moreover, the law to be applied in the instant case, other than that involved in the immediate foregoing paragraphs, is of general importance as we have shown.

CONCLUSION

For the reasons set forth in the petition for certiorari, in the brief in support of the petition, and in this reply petitioner urges that the writ of certiorari should issue as prayed.

Respectfully submitted,

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December 11, 1947.

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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 301

EDWARD G. BUDD MANUFACTURING COMPANY,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The court below issued no opinion. Its decree (R. 321) is reported in 162 F. 2d 461. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 53–58, 31–47) are reported in 65 N. L. R. B. 612.

JURISDICTION

The decree of the court below (R. 321) was entered on June 3, 1947. The petition for a writ of certiorari was filed August 27, 1947. The jurisdiction of this Court is invoked under Section

240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) and (f) of the National Labor Relations Act.

QUESTION PRESENTED

The Board consents to this Court's granting of a writ of certiorari for the limited purpose of making certain modifications in the decree entered by the court below which are rendered necessary by the enactment of the Labor Management Relations Act of 1947 subsequent to the entry of the decree below. The Board consents that the portion of the decree entered by the court below requiring petitioner to cease and desist from discouraging membership in the Foreman's Association of America or from in any other manner interfering with its supervisory employees in the exercise of the right to self-organization, may and should be stricken. Subject to these modifications only one question is presented for determination:

Whether the Labor Management Relations Act of 1947 operates retroactively so as to compel the setting aside of a decree of the court below issued twenty days before that statute was enacted and eighty days before its effective date, which decree enforces a Board order, valid under the prior law, requiring petitioner to reinstate with back pay a foreman discriminatorily discharged.

STATUTES INVOLVED

The pertinent provisions of the National Labor Relations Act of 1935 (49 Stat. 449, 29 U. S. C.

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151 *et seq.*) and of the Labor Management Relations Act of 1947 (Public Law 101, 80th Cong., 1st Sess., Chap. 120) are set forth in the Appendix, *infra*, pp. 22–28.

STATEMENT

Upon the usual proceedings under Section 10 of the National Labor Relations Act, the Board, on January 30, 1946, issued its findings of fact, conclusions of law, and order (R. 53–56, 31–47). The facts as found by the Board and as shown by the evidence, so far as material to the issues here presented, may be summarized as follows:[1]

In the early part of 1944, as a result of organizing activities on the part of petitioner's foremen, a chapter of the Foreman's Association of America, hereinafter called the Union, was formed at petitioner's plant (R. 34; 128, 152–153). At the first meeting of the Union, held a few weeks before Easter at the home of Oscar Owens, a foreman then employed by petitioner, Owens, McNary, and Harrison were selected as temporary officers of the Union (R. 34, 38; 128). Owens was named president (R. 38; 130). Petitioner promptly learned of these activities, and the three Union officers were immediately summoned to two successive meetings with petitioner's plant manager, Walton, and its personnel director,

[1] In the following statement, record references preceding the semicolons are to the Board's findings; succeeding references are to the supporting evidence.

Erwood (R. 34–35; 73–74, 79–80, 129–130). At the first meeting Owens, McNary, and Harrison were interrogated by Walton and Erwood respecting their Union affiliation, and their reasons for wanting a union (R. 35; 79–80, 129). At the second meeting Erwood told them, "You either got to resign as officers of the Union or resign from the Company," and Walton added, "You fellows cannot belong to it [the Union] and work for Budd" (R. 35; 130, 132). They were also warned to discontinue their organizational efforts on penalty of discharge (R. 35; 95). Thereupon Owens, Harrison, and McNary promised to, and on the following Sunday did, resign as officers of the Union (R. 35; 131, 132–3).

In further implementation of petitioner's anti-union program, all petitioner's foremen were called before Walton, Erwood, and other supervisors of the company and questioned as to why they wanted a union and what grievances they had (R. 35; 81, 82, 88). There they were told unequivocally that the Company "did not want a Union and that we would oppose it" (R. 35; 82, 179). One group of foremen was told by Erwood that "Before we have a Foreman's Union, we will shut the plant down" (R. 35 n. 5; 162). Petitioner admits that it "did warn and threaten its supervisory employees that they would be discharged unless they resigned their membership in or ceased to engage in activities on behalf of the Union" (R. 35 n. 5; 24, 28).

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Oscar Owens was summarily discharged on April 14, 1944, less than two weeks after his resignation as president of the Union, the discharge to be effective in fifteen minutes (R. 38; 134). On Owens' complaint that a discharge on such short notice was unusual, Superintendent Montee replied, "Well, I know. You know what it is all about" (R. 38; 134–135). Owens then asked Personnel Director Erwood to reinstate him to his former nonsupervisory job as inspector (R. 38; 138). It was petitioner's practice to permit foremen who could no longer be used in that capacity to continue to work as rank and file employees, and jobs for which Owens was qualified were then available (R. 38; 100, 112, 309). Nevertheless, Erwood refused Owens' request admittedly because he had heard that Owens had continued his organizing activities for the Union (R. 38, 100–101).[2] A request by a group of foremen for Owens' reinstatement was met with the response that Owens had been discharged "because he was a god-damned liar" (R. 39; 176, 179, 181). Petitioner admits that it "laid him [Owens] off and that it refuses to reemploy him" because "he attempted to organize members of the Company's supervision into a labor organization and * * * when warned that continuation of such action would result in his being laid

[2] In fact, Owens was the only supervisory employee who was laid off during the first four months of 1944 without being given the opportunity of going back to work on production (R. 112).

off, he agreed to discontinue such activities but failed to do so whereupon he was laid off" (R. 38; 27).

Petitioner's foremen occupy a position at the first level of supervision [3] and are responsible in a limited sense for the training of workers who are directly under them and for the quality and quantity of production, for safety conditions, and for other aspects of production in their respective departments (R. 36–37; 197–203). However, with respect to all these matters, standards by which the foremen are, generally speaking, bound, are set by other departments (R. 36–37; 219–236).[4]

[3] The managerial hierarchy of petitioner's plant at the time of the hearing was as follows (R. 187–188, 191):

1 General Manager	38 General Foremen
7 Superintendents	78 Foremen
8 Assistant Superintendents	5 Assistant Foremen

This was substantially the situation that existed at the time of the unfair labor practices (R. 189, 191). Foremen and assistant foremen direct the activities of the production and maintenance personnel under them and report to the general foremen (R. 188–189, 239). Although about 95 percent of petitioner's foremen are recruited from the rank and file, they are excluded from the collective bargaining contract which petitioner has entered into with the union representing the nonsupervisory production and maintenance employees (R. 202, 195, 298–299).

[4] For example, the inspection department (R. 219), the engineering department (R. 220–221), the stock department (R. 221–222), the safety engineers (R. 223), the employment department (R. 224), the standards department (R. 224, 225), the time-study men (R. 225), the personnel department (R. 226–227), the cost department, and the tool design engineering department (R. 229).

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The role of foremen in the rank and file grievance procedure is dictated by petitioner's contract with the rank and file union, which provides that settlement of a grievance is first to be attempted by the foreman, but is subject to an appeal to higher plant authority (R. 37; 192–193, 195, 300–302).

Upon these facts the Board concluded (R. 36, 37) that "the foremen at the plant were supervisory employees who occupy an intermediate position between top management and the rank and file employees * * * foremen are bound by directions from their own supervisors, but in their own departments, as supervisors, they exercise a good deal of discretion in carrying out their orders." The Board found further (R. 37) that these supervisory employees were, nonetheless, employees within the meaning of the Act and entitled to the protection of Section 8 (1) and (3) thereof. The Board held, therefore (R. 37, 43), that petitioner, through the acts and conduct of Personnel Director Erwood and Plant Manager Walton, had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them by Section 7, thus violating Section 8 (1) of the Act. The Board also held (R. 39, 43) that Owens' Union activities played a part in his selection for layoff, and that in any event the refusal to reemploy him when he normally would have been reemployed, solely because of his Union activities, was itself a violation of Section 8 (3) of the Act. Consequently, the

Board ordered petitioner to cease and desist from its unfair labor practices, or from interfering in any other manner with its supervisory employees in their self-organizational efforts; affirmatively, the Board ordered petitioner to reinstate Owens with back pay and to post the usual notices (R. 55–56).

On May 11, 1946, the National Labor Relations Board filed in the court below a petition requesting enforcement of its order (R. 1–6). On June 3, 1947, the court below handed down its decree holding that the foremen here involved were "employees" within the meaning of the National Labor Relations Act and that the Board's findings of unfair labor practices in violation of Sections 8 (1) and (3) of the Act were supported by substantial evidence (R. 321–322). The court accordingly enforced the Board's order (R. 321–322).

ARGUMENT

1. Insofar as the decree below enforces the cease and desist provisions of the Board's order, it imposes on petitioner a rule of conduct for the future which is inconsistent with the now existing rule of law applicable to such situations. Thus the cease and desist provisions of the Board's order require petitioner not to discourage membership of its supervisory employees in the Foreman's Association of America and not in any other manner to interfere with, restrain or coerce its supervisory employees in the exercise of the

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right to self-organization (R. 55). Since August 22, 1947, the effective date of the Labor Management Relations Act, it has been lawful for an employer to discourage membership of his supervisory employees in a labor organization, and otherwise to interfere with self-organization of supervisors. By Section 2 (3) of the amended National Labor Relations Act any individual employed as a supervisor is excluded from the term employee as used in the Act, and by Section 2 (11) the term supervisor is defined in such a manner as to embrace all foremen of the type involved in the instant case. If there could be any doubt from the language changes made in the Act as to the intent of Congress, the legislative history of these changes makes it entirely clear that Congress intended that employers be free in the future to discharge foremen for joining a union and to otherwise interfere with foremen's organizational activity.[5]

Since the cease and desist provisions of the decree below enjoin petitioner from engaging in conduct which is now lawful these provisions should be stricken. *Duplex Printing Press Co.* v. *Deering,* 254 U. S. 443, 464; *American Steel Foundries* v. *Tri-City Council,* 257 U. S. 184, 208.

[5] H. Rep. No. 245, on H. R. 3020, 80th Cong., 1st Sess., p. 15; S. Rep. No. 105, on S. 1126, 80th Cong., 1st Sess., pp. 4–5; Cong. Rec., April 15, 1947, pp. 3533, 3556; Cong. Rec., April 23, 1947, p. 3952; Cong. Rec., April 28, 1947, p. 4260; Cong. Rec., May 1, 1947, p. 4490; Cong. Rec., May 12, 1947, pp. 5518, 5146; Cong. Rec., June 6, 1947, p. 6660.

The Board, therefore, consents to the grant of certiorari limited to the questions presented by these cease and desist provisions, and consents to the modification of the decree below by striking therefrom all provision for enforcing the cease and desist paragraphs of the Board's order, being paragraphs 1 (a) and 1 (b) of the Board's order (R. 55).

2. With respect to the portion of the decree below which enforces the Board's order requiring reinstatement with back pay to Owens, we believe that a different rule of law is applicable.* Owens was discharged on April 14, 1944 (R. 38). He was not only discriminatorily removed from his job as a foreman but also was discriminatorily denied the job as a non-supervisory employee which he held before he became a foreman and to which he would have been returned but for his

*On July 7, 1947, the Circuit Court of Appeals for the Sixth Circuit in *Eastern Gas and Fuel Associates* v. *N. L. R. B.*, 162 F. 2d 864, issued its decision enforcing a Board order which required the employer to reinstate a foreman discriminatorily discharged for his activities in behalf of a union of supervisory employees. On September 8, 1947, however, the court, on the employer's petition for rehearing and without benefit of the views of opposing counsel, modified its decree "so as to be limited in its terms to the period ending August 22, 1947," the effective date of the Labor Management Relations Act. The Board disagrees with the court's ruling insofar as the ruling may be deemed inconsistent with the views stated herein, but no further proceedings have been taken in that case, adjustment of the case having been made informally on terms satisfactory to all parties.

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union activities (R. 38–39; 100, 112, 127, 138–139, 309). The Board has consistently protected foremen against discharge for union activity, without regard for the diversity of opinion as to the obligation of an employer to bargain with foremen which was described in *Packard Co.* v. *N. L. R. B.*, 330 U. S. 485, 492. In engaging in union activity Owens relied upon the then well established law that an employee in his position was protected from discharge on account of organizational activity and would receive reinstatement and back pay if discharged on account of such activity.[7] The question here before the Court is whether, by having delayed making restitution for more than three years during which time the law was changed so that such a discharge in the future is not illegal, petitioner can deprive Owens of such restitution. We believe the answer

[7] See e. g. *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U. S. 49, enforcing 1 N. L. R. B. 68, 76; *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. 2d 862, 870–871 (C. C. A. 2), certiorari denied, 304 U. S. 576, enforcing as modified 2 N. L. R. B. 626, 678; *National Labor Relations Board* v. *American Potash & Chemical Corp.*, 98 F. 2d 488, 493. (C. C. A. 9), enforcing 4 N. L. R. B. 498, 504–505; *National Labor Relations Board* v. *Skinner & Kennedy Stationery Co.*, 113 F. 2d 667, 671 (C. C. A. 8), enforcing 13 N. L. R. B. 1186, 1192–1193; *National Labor Relations Board* v. *Richter's Bakery*, 140 F. 2d 870 (C. C. A. 5), certiorari denied, 322 U. S. 754, enforcing 46 N. L. R. B. 447, 450, 474–479; *National Labor Relations Board* v. *Condenser Corp.*, 128 F. 2d 67, 74–75 (C. C. A. 3), enforcing 22 N. L. R. B. 347, 386–389; *R. R. Donnelley & Sons Co.* v. *National Labor Relations Board*, 156 F. 2d 416, 420–421 (C. C. A. 7), certiorari denied, 329 U. S. 810.

should be in the negative, especially in a situation such as this where the right to restitution had already been embodied in a decree prior to the change in the law.

As has been noted, the decree of the court below was issued on June 3, 1947 (R. 321), twenty days before the enactment of the amendatory Act and eighty days prior to its effective date. No question is here raised as to the validity of the decree as of the time it was issued and for eighty days thereafter, or as to the illegality of petitioner's conduct during the three years preceding. Had petitioner, therefore, complied, as it should have, at any time during the almost three months prior to the effective date of amendatory Act with the then admittedly valid decree (as to which no stay was granted), nothing of any significance would have remained to be decided. Petitioner, however, persisted in its refusal to comply until the passage of the amendment in question and thereafter until its effective date, and now seeks to utilize its failure to comply with that decree as a basis for non-compliance thereafter. Petitioner should not be permitted to benefit by reason of its long continued refusal to obey the law. Cf. *United States ex rel. Randall* v. *U. S. Marshal for Eastern District of New York,* 143 F. 2d 830 (C. C. A. 2), where petitioner fled the jurisdiction of the court after having been sentenced for violation of the Prohibition Act. Many years after the repeal of that Act, petitioner was recap-

tured and filed a petition for a writ of habeas corpus. In denying the petition the court said: "If he had surrendered on February 2, 1932, instead of fleeing the jurisdiction, service of his sentence would have been completed before the repeal of the Eighteenth Amendment. In the circumstances he has no just ground for complaining because the United States Marshal is now proceeding to have the sentence executed." To the same effect see other cases cited n. 13, p. 17, *infra*.

Moreover, entirely apart from the fact that petitioner's obligation to make Owens whole by reinstating him with back pay had been embodied in a valid decree prior to the change in the law, we believe that under applicable statutes and decisions of this Court, petitioner's liability to reinstate Owens with back pay became fixed at the time it unlawfully discharged him and is not affected by the change in the law. Petitioner's position to the contrary is based on the now superseded common law rule which was that, absent a savings clause, the repeal of a federal statute destroys the rights and obligations, and remits the penalties and forfeitures dependent upon that statute. *Hertz* v. *Woodman*, 218 U. S. 205, 216; *United States* v. *Tynen*, 11 Wall. 88; *Norris* v. *Crocker*, 13 How. 429. However, that rule was changed by the enactment in 1871 by the Congress of a general savings statute (Act of February 25, 1871, 16 Stat. 431, Sec. 4, 1 U. S. C. 29) which reads as follows:

> The repeal of any statute shall not have the effect to release or extinguish any pen-

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> alty, forfeiture, or liability incurred under such statute, unless the repealing act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability. (R. S., Sec. 13.)[8]

This Court has held that this statute is to be construed as constituting a part of every repealing act,[9] and that this is so even where the repealing statute itself contains a special savings clause.[10]

The general savings statute has been applied by this Court, by the lower federal courts, and by state courts in more than fifty cases. The words "penalty, forfeiture, or liability" have been construed to cover every cause of action, civil, criminal, or statutory. The leading case on the construction of these words is *United States* v. *Reisinger,* 128 U. S. 398, where "liability" was held to include even the "liability to be im-

[8] This statute was amended in 1944 (Act of March 22, 1944, 58 Stat. 118, c. 123) by adding the following: "The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability."

[9] *Great Northern Ry. Co.* v. *United States*, 208 U. S. 452, 465; *United States* v. *Chicago, St. P., M. & O. Ry. Co.*, 151 Fed. 84, 94 (D. Minn.), affirmed, 162 Fed. 835 (C. C. A. 8), certiorari denied, 212 U. S. 579.

[10] *Great Northern Ry. Co.* v. *United States*, *supra*, at p. 466; see also *Hertz* v. *Woodman*, 218 U. S. 205, 218.

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prisoned" (at p. 403). A partial list of cases collated in the footnote shows how broadly the language of the statute has been construed.[11]

Since the enactment of this statute in 1871 no federal court, so far as we have been able to determine, has ever expressly or impliedly at-

[11] *Hertz* v. *Woodman*, 218 U. S. 205 ("liability to pay" inheritance tax where testator died on March 15, 1902, repeal April 12, 1902, and date for scheduling by executor, etc., all subsequent to repeal); *United States* v. *U. S. Industrial Alcohol Co.*, 8 F. Supp. 179, 181–183 (D. Md.) (so-called tax on alcohol diverted to beverage purposes could be collected though suit not begun till after repeal of 18th Amendment); *United States* v. *Four Cases of Lastings*, Fed. Cas. No. 15, 145 (S. D. N. Y., 1879) ("liability" to forfeiture of imported goods knowingly entered by means of a false invoice); *Tinker* v. *Van Dyke*, Fed. Cas. No. 14, 058 (C. C. E. D. Mich. 1876) (the "liability" of a creditor who had received property from his debtor, under circumstances constituting an unlawful preference within the Bankruptcy Act, to refund it to the assignee of the debts in bankruptcy); *Warren* v. *Garber*, Fed. Cas. No. 17,196 (C. C. E. D. Va., 1877) (same); *Bradbury* v. *Galloway*, Fed. Cas. No. 1,764 (D. Cal.) (same); *DeFour* v. *United States*, 260 Fed. 596, 599 (C. C. A. 9), certiorari denied, 253 U. S. 487 (offense of keeping house of ill fame on June 3, 1918 in violation of Act of May 18, 1917 and the order of the Secretary of War made and issued thereunder on January 17, 1918 when law and orders made thereunder were repealed July 9, 1918); *Goublin* v. *United States*, 261 Fed. 5 (C. C. A. 9) (same); *Lang* v. *United States*, 133 Fed. 201 (C. C. A. 7) (importing women into United States for immoral purposes); *United States* v. *Krupnick*, 51 F. Supp. 982, 989 (D. N. J.) (indictments charging violation of Maximum Price Regulation under OPA); *United States* v. *Auerbach*, 68 F. Supp. 776, 778–779 (S. D. Calif.) (same); *Peters* v. *Felber*, 66 Calif. App. 2d 1011, 1012–1013, 152 P. 2d 42 (suit by tenant to recover treble overcharge of rent under O. P. A. after section in question completely revised by Congress).

tempted, in any case involving the repeal or amendment of a federal statute, to apply the common law rule of repeal by implication, or of remission of liability or offense by repeal. An examination of the many cases cited by petitioner (Pet. 27–41) reveals that none of them conflict with this basic principle.[12] *United States* v.

[12] Although many of the cases cited by petitioner are distinguishable on several grounds, for purposes of brevity only one ground will be cited here. Cases decided prior to 1871 and therefore not applicable: *The Assessor* v. *Osbornes*, 9 Wall. 567 (1869); *Ex Parte McCardle*, 7 Wall. 506 (1868); *Insurance Company* v. *Ritchie*, 5 Wall. 541 (1866); *McNutty* v. *Batty*, 10 How. 72 (1850; *Harvey* v. *Tyler*, 2 Wall. 328 (1864); *Norris* v. *Crocker*, 13 How. 429 (1851); *United States* v. *The Schooner Peggy*, 1 Cranch 103 (1801); *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 18 How. 421 (1855). Jurisdictional cases where the amendatory or repealing statute expressly removed all jurisdiction in the courts to hear or process or specifically applied to pending proceedings; *Carpenter* v. *Wabash Ry. Co.*, 309 U. S. 23; *In re Hall, Petitioner*, 167 U. S. 38; *Railroad Co.* v. *Grant*, 98 U. S. 398; *Smallwood* v. *Gallardo*, 275 U. S. 56. Cases where either no amendatory statute or no federal statute was involved: *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 331 U. S. 416; *Gulf, C. & S. F. Ry. Co.* v. *Dennis*, 224 U. S. 503, 506; *Patterson* v. *Alabama*, 294 U. S. 600; *Ashcraft* v. *Tennessee*, 322 U. S. 143; *Vandenbark* v. *Owens-Illinois Co.*, 311 U. S. 538; *Watts, Watts & Co.* v. *Unione Austriaca Di Navigazione*, 248 U. S. 9; *Lamb* v. *Powder River Live Stock Co.*, 132 Fed. 434 (C. C. A. 8). Cases where relief granted was against orders stating rules to govern a continuing course of conduct in the future: *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443; *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184; *Texas Company* v. *Brown*, 258 U. S. 466; *Ziffrin* v. *United States*, 318 U. S. 73, 78; *Public Utilities Commission of Ohio* v. *United Fuel Gas Co.*, 317 U. S. 456, 466. Mootness cases: *Mills* v. *Green*, 159 U. S. 651

Chambers, 291 U. S. 217, involved the repeal of the 18th Amendment and turned on the difference between a constitutional amendment, to which the savings statute could not apply, and an amendment to a statute.[13]

There is no merit in petitioner's contention (Pet. 32–33) that the action of Congress is specifically preserving for a year the effect of representation certifications under the old act (see Sec. 103 of the Labor Management Relations Act) implies an intention not to preserve any others. As we have stated, this Court has held that the presence of a special savings clause in an enactment does not necessarily affect the applicability of the general savings statute to the remainder of that enactment (*supra*, p. 14, n. 10). The history of the Labor Management Relations Act shows that Congress considered but rejected a proposal which

(no amendatory statute involved); *Berry* v. *Davis*, 242 U. S. 468 (no federal statute involved); *Dinsmore* v. *Southern Express Co.*, 183 U. S. 115 (order *in futuro*); *Hodges* v. *Snyder*, 261 U. S. 600 (order *in futuro*).

[13] Even here it may be noted that the courts refused habeas corpus to prisoners whose sentences had become final prior to repeal. See the *Randall* case (*supra*, pp. 12–13) decided in 1944. To the same effect see *United States ex rel. Cheramie* v. *Dutton*, 74 F. 2d 740 (C. C. A. 5), certiorari denied, 295 U. S. 733 (sentence became final month before effective date of repeal); *Welch* v. *Hudspeth*, 132 F. 2d 434 (C. C. A. 10); *United States ex rel. Nerbonne* v. *Hill*, 70 F. 2d 1006 (C. C. A. 3), certiorari denied, 292 U. S. 634; *Odekirk* v. *Ryan*, 85 F. 2d 313 (C. C. A. 6); *United States ex rel. Voorhees* v. *Hill*, 72 F. 2d 826 (C. C. A. 3); *Hosier* v. *Aderhold*, 71 F. 2d 422 (C. C. A. 5).

would have substituted the common law rule for the rule of statutory construction created by the general savings statute. Thus, a provision of Section 102 (c) of the bill passed by the House, which would have had the effect of prohibiting entry by the Board or enforcement by the courts of any order based on prior unfair labor practices unless the conduct involved continued to be an unfair labor practice under the Amendments, was eliminated in conference (see Section 102 (c) of H. R. 3020, 80th Cong., 1st Sess.; Conference Report, H. Rep. No. 510, 80th Cong., 1st Sess., p. 61).

In view of the foregoing, the Board has held that the general savings statute must be deemed to preserve all "liabilities" arising under the National Labor Relations Act prior to its amendment and that for such purposes the original Act must "be treated as still remaining in force," regardless of whether the Amendments to the Act prevent such liabilities from arising in the future."[14]

3. Petitioner's further contention, that enforcement of the Board's order would be a useless formality and frustrative of the Act, is also without merit insofar as the contention applies to the reinstatement and back pay provisions (Pet. 37–47). Petitioner asserts that the purposes sought to be achieved by the Act are remedial and not penal; that the rights sought to be guaranteed

[14] *Matter of Marshall & Bruce Co.*, 75 N. L. R. B., No. 13, 21 L. R. R. M. 1001; *Matter of Pioneer Electric Co.*, 75 N. L. R. B., No. 14, 21 L. R. R. M. 1006.

are public and not private; and that since the new act is not designed to afford protection to supervisory employees the relief in this case is inappropriate (*ibid.*). Petitioner, however, fails to distinguish between relief operating prospectively and the award of reinstatement and back pay which operates retrospectively. Cf., *National Labor Relations Board* v. *Sandy Hill Iron & Brass Works,* decided November 5, 1947 (C. C. A. 2). The Circuit Court of Appeals for the Eighth Circuit has held that "The order of this Court, affirming and directing payment of the back pay award, stamped it with finality as a definite and enforcible obligation against the employer." *National Labor Relations Board* v. *Killoren,* 122 F. 2d 609, 612. It has further been recognized that an award of reinstatement and back pay operates retrospectively with respect to past employer conduct and is intended to remedy past violations of law. *Virginia Electric & Power Co.* v. *National Labor Relations Board,* 319 U. S. 533, 539–544; *Agwilines, Inc.* v. *National Labor Relations Board,* 87 F. 2d 146, 150 (C. C. A. 5). It follows that since such an award is retrospective, and does not undertake to govern the employer's future conduct vis-a-vis his employees, a final decree embodying such an award, entered prior to August 22, 1947, remains enforceable.[18] Certainly

[18] The cases cited by petitioner (Pet. 38–41) to establish that enforcement of the Board's order herein would be a futile gesture all present instances where the remedy sought

a judgment awarding back pay would not be futile or a formality. And an order of reinstatement would place Owens in the same position he would have occupied if petitioner had obeyed the law in effect when he discharged Owens and the decree of the court below when it was entered.

4. The issue in this case is of no general importance inasmuch as it applies only to a situation in which a judicial decree ordering reinstatement of foremen with back pay was entered but not obeyed prior to the passage of the 1947 Act. Although a few other cases decided by or presently pending before the Board may raise a related question, the instant case is the only one now pending in which the judicial decree was entered before the enactment of the 1947 Act.

CONCLUSION

The National Labor Relations Board consents to the granting of a writ of certiorari for the purpose of striking from the decree of the court below the cease and desist provisions thereof.

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to be applied was impossible of fulfillment or prospective in nature and contrary to the then existing law. In *Pennsylvania* v. *The Wheeling & Belmont Bridge Co.*, 18 How. 421, although the injunction against the construction and maintenance of a bridge was dissolved in view of an intervening act of Congress specifically authorizing the bridge at its then site and elevation, that part of the decree awarding costs to the petitioner was held to have passed "beyond the reach of the power of congress" and was sustained (at pp. 431–432).

Subject to these modifications, it is submitted that the decision below is correct in all respects. No question of general importance is raised. The petition as to the remaining question presented should, therefore, be denied.

Respectfully submitted,

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Solicitor General.

ROBERT N. DENHAM,
General Counsel,

DAVID P. FINDLING,
Associate General Counsel,

RUTH WEYAND,
Acting Assistant General Counsel,

ARNOLD ORDMAN,
Attorney,
National Labor Relations Board

DECEMBER 1947.

APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C., 151 *et. seq.*) are as follows:

SEC. 2. When used in this Act—

* * * * *

3. The term "employee" shall include any employee, * * *.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. * * *

* * * * *

SEC. 10. (e) The Board shall have power to petition any circuit court of appeals

of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * * The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court

as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like man-

ner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

2. The relevant provisions of the Labor Management Relations Act of 1947 (Public Law 101, 80th Cong., 1st Sess., Chap. 120) are as follows:

SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

* * * * *

"SEC. 2. When used in this Act—

* * * * *

"(3) The term 'employee' shall include any employee, * * * but shall not include any individual employed * * * as a supervisor, * * *.

* * * * *

"(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

* * * * *

"SEC. 10. * * * (e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * * The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as pro-

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vided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

"(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

* * * * *

"SEC. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining."

* * * * *

SEC. 103. No provisions of this title shall affect any certification of representatives or any determination as to the appropriate collective-bargaining unit, which was made under section 9 of the National Labor Relations Act prior to the effective date of this title until one year after the date of such certification or if, in respect of any such certification, a collective-bargaining contract was entered into prior to the effective date of this title, until the end of the contract period or until one year after such date, whichever first occurs.

SEC. 104. The amendments made by this title shall take effect sixty days after the date of the enactment of this Act, except that the authority of the President to appoint certain officers conferred upon him by section 3 of the National Labor Relations Act as amended by this title may be exercised forthwith.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 301

EDWARD G. BUDD MANUFACTURING COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent

MOTION BY FOREMAN'S ASSOCIATION OF AMERICA FOR LEAVE TO INTERVENE AND BE RANGED AS A RESPONDENT

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MOTION BY FOREMAN'S ASSOCIATION OF AMERICA FOR LEAVE TO INTERVENE AND BE RANGED AS A RESPONDENT

Foreman's Association of America, a voluntary association, by Walter M. Nelson, its attorney, respectfully says:

1. That Foreman's Association of America is a voluntary association of supervisors or foremen having its offices and principal place of business at Detroit, Michigan and members in various States of the United States;

2. That Foreman's Association of America has been and is a labor union within the meaning of the National Labor Relations Act (*Packard Motor Car Company v. N. L. R. B.*, — U. S. —, decided March 10th, 1947);

3. That Foreman's Association of America, Chapter No. 77 (R. 22) made the original charge for relief from unfair labor practices of petitioner affecting interstate commerce and intervener's members (Sec. 8 (1) and (3) and Sec. 2 (6) 49 Stat. 449, Title 29 U. S. C. A., Sec. 151) that initiated the proceedings before the National Labor Relations Board (R. 20, 22, 31) referred to in the Petition for Certiorari herein, and that its counsel and vice-president attended throughout the hearing before the Trial Examiner (R. 59 to 281), but that petitioner did not attend the oragl argument before the Board (R. 32);

4. That Foreman's Association of America, Chapter No. 77, moved for leave to intervene in the enforcement proceedings before the United States Circuit Court of Appeals for the Sixth Circuit (R. 15) and the same was granted (R. 17);

5. That counsel for Foreman's Association of America attended the argument in the United States Circuit Court of Appeals for the Sixth Circuit, but did not participate because the Court announced the probability that it would follow the rule lately laid down in *Packard Motor Car Company v. N. L. R. B.*, — U. S. —, decided March 10, 1947;

6. That as intervener in the United States Circuit Court of Appeals for the Sixth Circuit, counsel for Foreman's Association of America was duly served by petitioner here with a copy of the Transcript of Record on Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit and Petition for Writ of Certiorari to United States Circuit Court of Appeals for the Sixth Circuit and Brief in Support Thereof;

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7. That after enforcement of the Order of the National Labor Relations Board was decreed by the United States Circuit Court of Appeals for the Sixth Circuit, and within the time for appeal therefrom, the Congress of the United States attempted to amend the National Labor Relations Act by an enactment commonly called and denominated Labor-Management Relations Act-1947 or the Taft-Hartley Act (Public Law 101—80th Congress, Chapter 120), which by its terms became effective August 22nd, 1947;

8. That it has been repeatedly announced in the public press and has been exemplified in Orders of Dismissal of proceedings by foremen before it and Petitions for Withdrawal of enforcement proceedings in the United States Circuit Courts of Appeal and other matters too numerous to mention in this Motion, that since August 22nd, 1947 said National Labor Relations Board has acted and must be expected in the future to act on the theory that the said Taft-Hartley Act (Public Law 101—80th Congress, Chapter 120) is valid and enforcible and that it cannot be expected to, and it will not, contest the Petition for Writ of Certiorari filed herein, nor will it contest or dispute the right of the petitioner herein to the relief prayed for;

9. That the granting of the relief prayed for by petitioner is destructive of and contrary to the rights of Foreman's Association of America and that while no present real controversy exists between said Edward G. Budd Manufacturing Company, petitioner, and National Labor Relations Board, respondent, a genuine controversy exists between said Edward G. Budd Manufacturing Company, petitioner, and Foreman's Association of America, intervener, and its members;

10. That Foreman's Association of America believes and desires to argue that if the Writ of Certiorari petitioned for herein is granted, the relief prayed for by said

Edward G. Budd Manufacturing Company, petitioner, should not be granted because (1) neither the protection of foremen from discriminatory discharges forbidden by the National Labor Relations Act nor the power of the National Labor Relations Board to prevent, punish or redress the same was amended or withdrawn by the Taft-Hartley Act, and if it be held to the contrary, (2) that said Taft-Hartley Act is invalid and unconstitutional and (3) that it is invalid and unconstitutional in the provisions relating to supervisors or foremen, the supervisors and foremen involved in the present controversy here being members of Foreman's Association of America;

11. That the real position of Foreman's Association of America is not comprehended in the position of *amicus curiae;* that it is a real party to the controversy and by statute subsequently enacted has become and is the only adverse real party in interest, and that the National Labor Relations Board is no longer a real party or the only real party or a reliable party in interest adversary to the claims and position of said Edward G. Budd Manufacturing Company, petitioner herein;

12. That Foreman's Association of America has no objection to the issuance of the Petition for Writ of Certiorari prayed for, Provided it is admitted to intervene and oppose and contest the granting of the relief requested by said Edward G. Budd Manufacturing Company, petitioner herein, upon grounds substantially as hereinabove set forth;

13. That as we are not here dealing with an administrative proceeding, but with a decree of a Court, it is appropriate and necessary that Foreman's Association of America be allowed to intervene herein to protect the rights of the foremen involved herein and the rights of its members generally which will be vitally affected.

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Eagle-Picher Mining and Smelting Company, et al., v. National Labor Relations Board (International Union of Mine, Mill and Smelter Workers Locals Nos. 15, 17, 107, 108 and 111, Intervener), 119 F. (2d) 903; *International Union of Mine, Mill and Smelter Workers Locals 15, et al., etc., Petitioners, v. Eagle-Picher Mining and Smelting Company, Eagle-Picher Lead Company, and National Labor Relations Board*, 325 U. S. 325, citing:

Amalgamated Utility Workers v. Consolidated Edison Co., 309 U. S. 261, 84 L. ed. 738, 60 S. Ct. 561;

National Licorice Co. v. National Labor Relations Board, 309 U. S. 350, 362, 363, 84 L. ed. 799, 809, 810, 60 S. Ct. 569;

Phelps-Dodge Corp. v. National Labor Relations Board, 313 U. S. 177, 193, 85 L. ed. 1271, 1282, 61 S. Ct. 845, 133 A. L. R. 1217;

Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 197, 218, 83 L. ed. 126, 134, 59 S. Ct. 206;

Williams v. Morgan, 111 U. S. 684, 28 L. ed. 559, 4 S. Ct. 638.

Wherefore, Foreman's Association of America prays that it be admitted as an intervener and as a party respondent and adversary to the ultimate relief prayed for by said petitioner and that it be granted such other, further and different relief as may be proper.

Respectfully submitted,

FOREMAN'S ASSOCIATION OF AMERICA,
By (s) WALTER M. NELSON,
Its Attorney,
1438 Dime Building,
Detroit 26, Michigan.

State of Michigan,
County of Wayne—ss.

On this 27th day of October, A. D. 1947 personally came before me Walter M. Nelson, who being by me first duly sworn, deposes and says that he has read the foregoing Petition for Leave to Intervene in the above entitled matter and that the same is true, except as to matters therein stated on information and belief, and that as to those matters he believes it to be true.

Louise C. Kushigian,
Notary Public, Wayne County, Michigan.
My commission expires December 1st, 1950.

DECEMBER 15, 1947.

Per Curiam Decision.

No. 301. EDWARD G. BUDD MANUFACTURING CO. *v.* NATIONAL LABOR RELATIONS BOARD. On petition for writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit. *Per Curiam:* The motion of the Foreman's Association of America for leave to intervene is granted. The petition for writ of certiorari is granted limited to the question of the validity of that part of the order of the National Labor Relations Board which directs the petitioner to cease and desist from discouraging membership in the Foreman's Association of America. The judgment of the Circuit Court of Appeals is vacated in that respect and the cause is remanded to that Court for consideration of the effect of the Labor Management Relations Act of 1947, 61 Stat. 136, on the question to which the grant of certiorari is limited. *Archibald Broomfield* for petitioner. *Solicitor General Perlman, David P. Findling* and *Ruth Weyand* for respondent. Reported below: 162 F. 2d 461.